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Native Administration Memoranda

No. I.

PRINCIPLES OF NATIVE ADMINISTRATION AND THEIR APPLICATION.

Second Edition

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MEMO. I.—*(Second Edition).*

PRINCIPLES OF NATIVE ADMINISTRATION AND THEIR APPLICATION.

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INTRODUCTORY.

The Covenant of the League of Nations.

Tanganyika is a Mandated Territory. The Mandatory system is founded on Article 22 of the Covenant of the League of Nations, the first two paragraphs of which read as follows :—

> "To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.
>
> "The best method of giving practical effect to this principle is that the tutelage of such people should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League."

His Majesty accepted the Mandate in respect of Tanganyika and undertook to exercise it on behalf of the League of Nations (see preamble to the Mandate on page 1 of volume III of the Laws of Tanganyika).

The tutelage under Article 22 of the Covenant is temporary.

2. It can scarcely be disputed that the intention of the Article from which I have just quoted is that the tutelage or guardianship created thereunder should continue until the peoples concerned are "able to stand by themselves". If this proposition is accepted—as I believe that it must be—it constitutes, in my judgment, the primary factor on which everything else should be based in Tanganyika in considering the political future of the country.

Our duties as guardian cannot be allowed to go by default.

3. It has been said that although the proposition which I have thus set out above may correctly represent the meaning of Article 22 of the Covenant which was in the minds of those who framed the Article, the conception was wrong inasmuch as the authors of the Covenant forgot the non-native population of the country, or, at least, entirely ignored its existence. Those who argue in this way add that the existence of the non-native community cannot entirely be ignored and that it is therefore impossible to give effect to

the Article in the manner in which I have construed it. The answer to that is that if we accept the argument so put forward that, for the reasons given, the Article—and therefore the Mandate—cannot be honoured strictly, then we should say so openly instead of silently ignoring our obligations in this respect.

Duty of the Mandatory to train the natives to take their place in the political structure.

4. Let us then revert to what I have described as the primary factor; the primary factor that the guardianship is not a permanent one and is to be exercised only until the people can "stand by themselves." That being so, it is clearly the duty of the Mandatory to train the people so that they may stand by themselves, *at least* as part of the whole community in the Territory, however long that training may take, and to make its dispositions in such a manner that, when the time comes, a full place in the political structure shall be found for the native population.

Arguments of the European community: "let sleeping dogs lie" so far as the natives are concerned politically.

5. Some of my non-official British European friends have said: "That is all very well, but you are an idealist. These things cannot happen for many years, perhaps for centuries, and so far as the natives are concerned it is quite sufficient, for the present, to 'let sleeping dogs lie'. Leave the political side so far as it affects the natives untouched; in any event do nothing which will suggest to his mind now that a place in the community belongs to him, a place which, in the conception, the acknowledged conception, of the Government, has to be considered, and considered now." My reply to that has been that the policy which they so advocate is a policy of negation; a policy which clearly would allow our obligations under the Covenant to go by default; a policy which no British Government would care to declare to the world. "And, you," I add, "you, in the meantime, press insistently for the development of the political side so far as it affects not the natives, but the Europeans. You want that side strengthened as soon as possible so that you may go from strength to strength and become so securely entrenched that there will be no place left for the native in the political structure *unless you please to give it to him.* You desire to create here an ultimate complete dominance for the white man based on what you call 'responsible government'." I have never received anything but an affirmative reply to that question. The answer is obvious and I have already given it: we cannot allow our obligations under the Covenant to go by default.

In the meantime the Europeans press for political development on their side.

Manner of training the native so that he may take his place in the political structure.

6. If I am right, then, basing myself on what I have described as the primary factor, that it is our duty to make our dispositions in such manner that, when the time comes, a place in the political structure shall be left for the natives, we must determine, from the start, how that is to be done.

We believe in Tanganyika that for the present and for many years to come the only way in which we can prevent the natives from "going under" and becoming a servile people (a condition desired for them by a number of white folk in East Africa) ; the only way of keeping his society together ; the only way in which he can be trained in public affairs—however simply in the early years—is by the system of indirect, or tribal, administration which has been instituted in the Territory within the last five years.

Training will take a long time but the field should nevertheless be left open.

7. It will take many years, probably not less than three or four generations, for the advancement of the natives so that they can, through their leaders, stand by themselves as a part of the community, and it seems to me to be indisputable that during that period of training under the British Government the latter must make no disposition in the political field which would impair its power to give effect to any decision it might have to take in order to comply with the spirit and the letter of the Mandate ; a proposition which no one would think of questioning if there were no non-natives in the Mandated Territory.

Possible future form of the legislature.

8. Eventually we shall possibly have a Central non-Native Council and a Central Native Council, delegates from each sitting together for most of the business now conducted in Legislative Council.

Threats of submerging the natives by economic exploitation of the country.

9. I am aware that there are those who whisper that what they describe as "my dream" in regard to the future of the native races of Tanganyika, would be shattered if minerals were found in large quantities in the Territory ; that it would be impossible to oppose economic exploitation of the country on a large and engulfing scale on the ground that the natives would thereby be deprived of the opportunity of obtaining a training which would allow them, eventually, to stand by themselves. I do not admit that the mineral wealth of the country, if it were demonstrated, could not be developed without submerging the natives and their political future ; but, in any event, if mineral wealth is, in our considered opinion, of more importance than the future of native races entrusted to our guardianship, let us proclaim that doctrine openly and honestly—with the obvious consequences.

D.C.

10.9.30.

PRINCIPLES OF NATIVE ADMINISTRATION AND THEIR APPLICATION.

(Second Edition).

The natives must be trained in the first instance to administer their own affairs.

1. In the foregoing introductory remarks I have endeavoured to show that the Mandatory Power is under a solemn obligation so to train the natives that they "may stand by themselves", at least as part of the whole community in the Territory, and that we cannot discharge that obligation if we do not train the people in the art of administration. It must be plain that in any such training we must first endeavour to teach the people to administer their own affairs, and it seems obvious that in doing the latter, *i.e.* teaching the people to administer their own affairs, the wise course, if not the only practical course, is to build on the institutions of the people themselves, tribal institutions which have been handed down to them through the centuries. Looking at the problem from the practical point of view alone (see paragraph 4 below) I can see no other way of training the native, inasmuch as if we set up artificial institutions which, so far as he is concerned, are founded on nothing that he can understand, those institutions can have no inherent stability and must crumble away at the first shock which they may receive, from his more sophisticated neighbour or otherwise.

Preservation of native institutions and their authority.

2. Everyone will, moreover, doubtless subscribe to the proposition that it is our duty to do everything in our power to develop the native politically on lines suitable to the state of society in which he lives. Our desire is to make him a good African, and we shall not achieve this if we destroy all the institutions, all the traditions, all the habits of the people, super-imposing upon them what we consider to be better administrative methods and better principles, but destroying everything that made the administration really in touch with the thoughts and customs of the people. We must not in fact destroy the African atmosphere, the African mind, the whole foundations of his race, and we shall certainly do this if we do not bring to the political application of the policy we have adopted a full understanding of its objects and an appreciation of the steps which we must take towards their fulfilment. When I write that our desire is to make the native "a good African" I mean that he should be trained in accordance with his environment instead of being given a European veneer totally out of keeping with the conditions under which he must live in Africa, where his home and people are. We want to make him proud of being an African (just as a Canadian is proud of being a Canadian) on the basis of a true African civilisation stimulated in the first instance by our own culture and example.

3. It may be argued that so far as mere administration is concerned—and this is by no means the same question as the political training of the natives—we can achieve our object by continuing the practice of using the chiefs as our instruments, as our mouth-pieces through whom the orders of the Government are issued to the people; but with all the disintegrating influences which are at work to impair the authority of the chief over his people that authority will be undermined and completely disappear as certainly as it is disappearing in other parts of tropical Africa, unless we take steps now to prevent its disappearance. As a consequence we should have destroyed the only foundations on which it is possible to build—and train.

Danger of impairing authority of Chiefs.

4. It must be remembered that it is quite impossible for us to administer the country directly through British Officers, even if we quadrupled the number we now employ and that the ultimate end of direct rule is inevitably complete political repression, or concession to political agitators, a class which has never failed to be created by systems of direct rule, of some western form of self-government neither understood by the mass of the people nor preserving the truly democratic features of native society. It has been well said that "a European officer cannot exert a personal influence on the characters of more than one or two hundred natives." If the natives so affected should be, as they are where the Native Administration is retained as a real thing, in positions to influence other natives in their turn, then a political officer's influence is magnified by a natural process a thousand fold. If, on the contrary, they are not so placed, then whatever influence the political officer may have over the few with whom he come into close contact becomes a mere drop in the bucket and is lost in the mass.

Country cannot be administered directly by British Officers.

5. But in place of the alternative of governing directly through Administrative Officers and using the Chiefs merely as our mouth-pieces through whom we give our orders to the people, there is the other method (see paragraphs 1 and 2 above), the other method of trying, while we endeavour to purge the native system of its abuses, to graft our higher civilisation upon the soundly rooted native stock, stock that had its foundations in the hearts and minds and thoughts of the people and therefore on which we can build more easily, moulding it and establishing it into lines consonant with modern ideas and higher standards, and yet all the time enlisting the real force of the spirit of the people, instead of killing all that out and trying to start afresh. Under this system the native authorities become a living part of the machinery of Government and the political energies and ability of the people are directed to the preservation and

Building on native institutions.

development of their own institutions. This is a task which will provide in ever increasing measure ample scope for those progressive Africans who genuinely desire to serve their own people.

Indirect Rule.

6. The system adopted by the Tanganyika Government for this purpose is based on the principle known as "Indirect Rule" that is the principle of adapting for the purposes of local government the institutions which the native peoples have evolved for themselves, so that they may develop in a constitutional manner from their own past, guided and restrained by the traditions and sanctions which they have inherited (moulded or modified as they may be on the advice of British Officers) and by the general advice and control of those officers. This policy has sometimes been described as "providing for the natives to develop on their own lines"; it would be more apposite to say that it provides for their development on their own feet. It is an essential feature of this system that, within the limitations and in the manner which will be discussed below, the British Government rules through these native institutions which are regarded as an integral part of the machinery of government, with well defined powers and functions recognised by Government and by law, and not dependent on the caprice of an executive officer.

Not intended to impose a form of British rule.

7. It must clearly be understood in this connexion that the policy of the Government is to maintain and support native rule (within the limits laid down) and not to impose a form of British rule with the support of native chiefs, which is a very different thing, although for some years in Tanganyika—in fact up to 1925—the choice of the Government between these two fundamentally different principles had not been made. Our aim should be to maintain and develop all that is best in the indigenous methods and institutions of native rule, to avoid as far as possible everything that has a denationalising tendency, and to inculcate respect for authority, self-respect and fair treatment of the lower classes, the weak and ignorant.

What are tribal institutions.

8. I have written above that it is the policy of the Government to administer the natives through their own tribal institutions and it will be convenient to pause here for a moment and examine what we mean by that phrase "tribal institutions". I mean by it the authority which according to tribal tradition and usage has regulated the affairs of each unit of native society. Those units are of different sizes. One may embrace a whole tribe such as the Wahehe or (speaking generally) the Wakerewe, ruled by one head chief with his traditional councillors and advisers; one may embrace

only a clan, or even part of a clan of a tribe, ruled, again, by one chief (*i.e.*, he has no superior chief above him); and another may embrace nothing more than a *chirambo* in the Lindi Province, that is a comparatively small area under the administration of a Headman. Every unit, to be a unit, is in charge of an authority known to the people as their tribal head—a Chief or a Headman—and every Chief and Headman has, as an integral part of the social scheme, his traditional councillors and advisers. He is not an autocrat, and he and his advisers and the simple peasants know quite well the degree in which his powers are circumscribed by native tradition and custom. He knows equally well that if his people are harshly or unjustly treated they will leave him and join a more humane chief. This is a point of great importance and Administrative Officers should study it patiently and cautiously and endeavour to ascertain fully the nature and extent of the safeguards against oppression by a chief or headman, set up by native society through the ages in this manner for its own protection, safeguards which, I have no doubt, are still preserved, *e g.*, the Chief who tries cases in his open *baraza* may be said to be for the most part only the mouth-piece of the Court, through whom its decision is promulgated.

The Chief or Headman.

9. As I have written in the preceding paragraph, each such native unit is, in accordance with native custom, in charge of an authority—a Chief or Headman. It had been alleged, it is true, that all that machinery of native government which existed before the European came to the country, or the greater part of it, had disappeared and ceased to function, but the experience of the last five years shows clearly that such is not the case; that the machinery we are using still held a large share in the life of the people. In Lindi, for example, where I hesitated for some time in approving any scheme of indirect administration in the belief that native society had completely been shattered by the influence of the Coast, we found that, in spite of Akidas who had held their sway for a number of years, the native courts of justice were still real entities, their survival under such adverse conditions being a truly striking token of the deep roots that native institutions do strike amongst African natives. There is a tendency sometimes to look for too much when we start to build up on autochthonous institutions in tropical Africa: I have heard it stated elsewhere, for example, that it is impossible to do anything in this respect unless one is able to find a potentate of the order and dignity of a King.

Native institutions; how given legal status.

10. These are the native institutions, which, in spite of neglect, had not ceased entirely to function, and we must now consider the manner in which they are brought within the

ambit of our system of European directing rule. They have to be made part of our local constitution, they have to be clothed with the authority of the law, and this is effected by means of the Native Authority Ordinance (Cap. 47 of the Revised Statutes), whereunder such native institutions as the Government decides to "recognise" are given legal status by being declared "Native Authorities" with certain specified powers.

Limitation of the powers of the Native Authorities.

11. There are limitations to the powers of the Native Authorities so constituted, the limitation lying in the fact that the Native Authorities are not independent rulers; they are merely the delegates of the Governor, whose representative is the Provincial Commissioner. The Government reserves to itself the right to impose taxation, to make laws, to control the exercise of such subsidiary legislative powers as may be delegated to Native Authorities, to dispose of such lands as are vested in the paramount power "for the use and common benefit, direct and indirect, of the natives of the Territory" (section 3 of the Land Ordinance, Cap. 68 of the Revised Statutes) and of course to raise and control armed forces. The disposal of the annual revenue of the Native Administration, the appointment and dismissal of important officers of the Native Administration and indeed all the important executive acts of a Native Authority, though emanating from itself, are subject to the guidance and advice of the Provincial Commissioner.

Native Authority Ordinance and its application.

12. Every Administrative Officer must make it his business to become closely acquainted with the Native Authority Ordinance and to interpret it in the light of this memorandum, for the ends of which it has been devised (see paragraphs 25 to 27). Unlike the old Ordinance which it superseded (curiously described, also, as a *Native* Authority Ordinance) it clothes the Native Authorities and not the Administrative Officers with executive authority: the Administrative Officer is no longer the executive authority for native affairs in the area of administration of a Native Authority—as he was under the former Ordinance; he now advises and guides *and supervises*, giving direct orders only if the native authority "shall neglect or refuse to issue" an order if directed by the Administrative Officer to do so (section 11 of the Ordinance).

Native Administrations: forms of, explained.

13. In the everyday language of the Administration the Native Authorities are generally described as "Native Administrations," *e.g.*, the Native Administration of Ukerewe, the Native Administration of the Wahehe, etc. There are different forms of these Native Administrations, each constituted as was suitable to the particular native society and in accordance with its wishes. In the first place we have the so-called "Paramount Chief" the Superior Native

Tribal Chief.

Authority, who, with his advisers, is the fount of all authority within the unit. The Native Treasury is the Treasury of this unit alone; the higher Native court—generally a court of appeal—is the court of this unit alone. The Native Authority may delegate some of its authority to Sub-Chiefs or Headmen, often hereditary offices of some standing, and this is a convenient course if there are areas at a distance from the Chief's headquarters. They will in such case formally be appointed to be subordinate "Native Authorities" subject to the superior authority; but it is not necessary to appoint all the servants or agents of *any* Native Authority to be themselves Native Authorities as they act as the officers and servants of the Native Authorities (see section 5 of the Ordinance) and are clothed with authority as such. Put briefly, it is not necessary to appoint any one to be a subordinate "Native Authority" within the meaning of the law unless he has in practice in the course of the duties entrusted to him to give orders occasionally on his own responsibility (his ultimate responsibility being to his Chief). The term "Paramount" in this connexion is a bad one and I think that we should cease to use it. A Chief is a Chief because he is a Chief and not because we dub him "Paramount", and some of the Chiefs now so described are not a tittle more important than some Chiefs who administer the affairs of a portion only of some of the greater tribes and have no Chief or Native Authority superior to them.

Federation of Chiefs.

14. In the second place, we have Chiefs who administer clans (or other sections) of the same tribe and have agreed, with the approval of their people, to form a "Federation" in order, chiefly, to pool their financial resources. Each Chief in the Federation retains executive authority in his own unit, and is appointed the Native Authority of that unit, but occasionally the Chiefs sitting together in Council (which is itself appointed a Native Authority) may agree to pass an order under section 8 of the Ordinance or a rule under section 15 (subject to the approval of the Governor) applicable to the whole area embraced by the Federation. There is a danger in this practice if too lightly applied inasmuch as in native society such orders or rules if of general application should be made by the executive authority of the unit with the advice and consent of his councillors; and this wholesome safeguard in a democratic society may be neglected if a Chief is allowed to assent to a measure when sitting as a member of the Council, without consulting his constitutional advisers. Administrative Officers should be careful to see that constitutional usage in this connexion is not neglected. (See also paragraphs 52 and 53).

Place of native court in a Federation.

15. In this class of Native Administration each Chief (Native Authority) has his own Native Court, sometimes with inferior Courts under it where the area of the unit is large, and the Chiefs agree to form a higher Court at the Federal headquarters which is generally a court of appeal. In principle, in forming this higher Court each Chief agrees that in his capacity as the chief executive of his own unit he will within that unit engage to see that the orders and decisions of the higher Court are duly carried out. It is therefore necessary that where a higher Court is being formed in this manner the Administrative Officer should take care to see that this principle is clearly understood by each of the Chiefs in the Federation, that is, that in consenting to the formation of such a Court each Chief thereby undertakes to give effect to its judgments within his own unit of which he is the executive head. In the Bukoba Province this higher Court is also a Court of first instance for the hearing of cases of first rate importance (see also paragraphs 52 and 53).

Federal Council not a superior Native Authority in the full sense.

16. It should clearly be understood that the Federal Council is not a superior Native Authority in the sense that the Chief of a tribe may be a superior Native Authority; that it does not appoint the servants of each of the Native Authorities constituting the Federation, nor does it dismiss them. Far less does it appoint the successor to a Chief if a vacancy occurs in any of the units of Native Administration constituting the Federation; in such case the vacancy is filled according to the traditions and custom of the unit, in the same way as if no Federation existed.

President of Federal Council.

17. In Native Administrations of this class the President of the Federal Council is generally chosen in rotation from the Chiefs forming the Federation (see also paragraph 54), but in some a permanent President has been appointed by the Chiefs themselves. In one or two instances attempts have been made to regard the permanent President of the Council as a "Paramount" Chief but the artificial nature of this pretension was soon disclosed. In my judgment there is at the moment no "paramount" Chief in the sense that that Chief is the superior Native Authority, in any of the Federations of Tanganyika. It has sometimes been thought, I understand, that a unit may withdraw from a Federation at its will and pleasure. I do not take that view. Once a unit has entered a Federation interests have been created of a general nature which should not be sacrificed at the whim of a Chief. A unit should, in my judgment, not be allowed to secede save for the gravest reasons and then only in the most exceptional cases. It will have a steadying influence on the Chiefs of a Federation to remind them, if necessary, that it

will be difficult, if not impossible, gradually to develop native institutions by means of larger Native Councils and eventually a Central Native Council (*cf.* paragraph 73) if even the Federal Council cannot endure.

Tribal Councils.

18. In the third class of Native Administration a Tribal Council is formed of a number of petty chiefs, better described as Headmen, all of the same tribe generally, each with executive authority in his own unit, clothed with authority as a Native Authority. They sit as Chairman of the Council in rotation and pool the common resources in a common budget. They have on occasion framed a general order or rule for the whole area served by the Council, but I consider that in administrations of this kind it is for the present, for the reasons given in paragraph 14 above, preferable that each Headman should frame the order or rule in his own unit, with the consent of his constitutional advisers. In some cases a court of appeal has been appointed at the Council's headquarters but owing to the great distance that suitors and members of the courts would in many cases have to travel, the District Officer acts as the court of appeal in the intervals between Council meetings which can seldom be held more often than two or three times a year. The possibility of grouping the Headmen and forming courts of appeal of their own in this manner is being examined.

Petty Chiefs.

19. In addition to these three classes of Native Administrations we find the small Chief or Headmen of a more or less isolated portion of a tribe not yet ripe to enter a Council. Each is, if recognised, appointed a Native Authority, with a Court with limited powers, and a small Treasury. These Chiefs and their people are seeing the benefits of the Council system with its common purse and there is a growing tendency on their part to seek to join a Council. It should be encouraged (see also paragraphs 52 and 53).

Form of Native Administration not to be stereotyped.

20. In order to simplify references in correspondence, the various forms of Native Administration described above are distinguished by the following names :—

Paragraph 13 - - - Tribal Chief.
,, 14 - - - Federation of Chiefs.
,, 18 - - - Tribal Council.
,, 19 - - - Petty Chief or Headman.

No attempt has been made, nor should it be made, to stereotype the various Administrations and force them into one pattern or another. It suffices if, in each case, the Native Administration is in accordance with the wishes and traditions of the Chiefs and people, and adequately fulfils the object of its existence, that is, the discharge by the local native authorities of the functions of local government in native affairs to such extent as circumstances may permit in each case.

Effective administration not possible without delegation of authority.

21. In establishing Native Administrations of whatever class each tribe should be carefully studied, lest in establishing its Native Authorities under the Ordinance we fall into the error of setting up a political structure alien to the people and distasteful to them or their chiefs. Particular care should be taken to consult the Head Chief of a unit, and to explain to him the need for delegation of authority, and the manner in which such delegation is effected by the Ordinance, while retaining unimpaired the power of the superior authority. It should be explained that though delegation must be exercised with care in proportion to the standing and ability of the sub-Chiefs and Headmen, without it effective administration is not possible, and it should be made clear that by consenting to the establishment under the law of the offices of subordinate Native Authorities the Chief is not surrendering in the smallest degree whatever control he may now enjoy over the appointment of individuals to those offices, or the manner in which they exercise their functions.

The Governor establishes the office of a Native Authority.

22. Thus the Governor, or if the power is delegated to him, the Provincial Commissioner, establishes by a formal instrument under the law certain offices to be executive institutions for a particular area, institutions to which, in accordance with the policy of indirect rule, is entrusted the administration of the people whom they represent, subject to certain limitations or obligations, as explained broadly in paragraph 11 of this memorandum; just as under closely related legislation he establishes, in the form of Native Courts, complementary judicial institutions. The Native Authority Ordinance makes provision for the limitation in particular instances of the powers which may be exercised by virtue of the establishment of any office to be a Native Authority, for it may be found that there are native authorities to whom in the beginning it would be unwise to entrust full powers; and, as has been explained above, for a general control of subordinate authorities by their superiors; but it is not concerned with the individual who may occupy an office, further than to require in section 3 (2) that he be so recognised by the Governor or by such person as the Governor may prescribe, *i.e.*, that he is clothed with statutory authority by being "recognised" in a Native Authority office.

Recognition of Chiefs, etc., by the Governor.

23. I wrote in paragraph 10 above that such native institutions as the Governor decides to "recognise" are given legal status under the Native Authority Ordinance. It will be noted that the law says "recognised by the Governor" and not "appointed": the individual who holds an office comes to do so in a variety of ways which will be explained later, but appointment by the Governor, in the sense in which he appoints civil servants, is not one of those ways, though he may in certain circumstances refuse to accept a particular individual.

NATIVE ADMINISTRATION MEMORANDUM I.

Amendment Slip No. 1. 16.7.34.

Add to *paragraph 23*:—

"The Governor has delegated to Provincial Commissioners his power to recognize Chiefs under section 2, Native Authority Ordinance (*see* General Notice No. 714 of 1934.) This power is to be distinguished from the power to establish a Native Authority, which has not been delegated, and is to be exercised subject to the following conditions:—

(a) Cases of exceptional importance or difficulty must be reported for the Governor's instructions.

(b) In all cases the action taken must be formally reported for record.

"In order that the powers of Provincial Commissioners may be complete in this respect formal authority is also given for the exercise of the power conferred on the Governor by Article 9 of the Tanganyika Order in Council, 1920, in so far as the appointment of Chiefs is concerned. For practical purposes these powers have the same effect.".

The holder of an office is either a hereditary chief, or a chief selected by the people for themselves, or a sub-chief, hereditary or otherwise, appointed by a Head Chief, or a native official appointed by the Chief. The position is the same in the case of a council which is established as a Native Authority for we there declare that the holders of certain offices (*e.g.*, the Chief of *A*, the Chief of *B* and so on) shall *in association as a council*, be a Native Authority, the individuals who are members of that council being those who, in accordance with the principles here discussed, are the *de facto* holders (recognised by the Governor) of the separate offices which, in association, are the council. In the case of hereditary Chiefs, we recognise *de facto* holders of the position as rightly entitled to it, and in the case of the Head of a Native Administration or a sub-chief who is not hereditary, we accept the person who is declared by the people to be their choice, or who is appointed by the Head Chief, if there is one, after he has consulted the people affected. Upon a Chiefship becoming vacant, we recognise similarly the person who, according to the laws of the tribe and the wishes of the people, is the rightful successor; such person *is* the chief, and his position does not depend on any act of appointment by the Governor, though in extreme cases the Government may exercise its undoubted right of refusing to accept an individual who, on personal grounds, is not considered fit to occupy the position: in such cases the tribe would be required to make an alternative selection. What depends upon the formal act of the Governor is the legal and constitutional status of the office, and in performing that formal act (paragraph 10 above) the Governor will prescribe the powers to be exercised by virtue of that office. An analogy which will help to make the position clear may be drawn from the British Administration where by a formal act of the sovereign authority the administration is declared to consist of certain offices and institutions, *e.g.*, the Governor, the Executive Council, the High Court, the Provincial Commissioners, and so on. The manner of appointment of individuals to those offices is quite distinct from the establishment of the offices.

Addition see Amendment Slip No. 1 of 16.7.34.

A Native Administration may be evolved at the present day.

24. In this connexion it must be borne in mind that, though in general Native Authorities will be established Chiefships, or a federation of such chiefships, it is also possible, where none such exist, for a Native Authority to be evolved at the present time, either in the form of a Council of the Heads of families, clans, settlements, or villages, or by the selection by the people of their own volition of an individual to be their chief. This form of Native Administration is not tribal and is really more "local Government" than "Native Administration". It is scarcely suited to primitive people and is generally adopted only on the coast, where in certain areas it is functioning success-

fully (*cf.* paragraph 57). Particular care is necessary in dealing with any such development to ensure that the authority proposed is in conformity with the general structure of the native society concerned, is desired and will be respected by the people, and that the proposal is not due to the selfish place seeking of ambitious individuals. The individual members of such an authority must hold their positions by virtue of hereditary right, or of selection by the people in some manner understood by them, and Administrative Officers should not concern themselves with the methods of selection further than to make sure that they conform to these requirements and that the individuals so selected are such as the Government may accept; in particular, "elections" on European lines should be avoided.

The Native Authority Ordinance designed to give effect to the policy adopted.

25. If the Ordinance is examined in the light of all the foregoing it will be seen that it is an instrument designed to give effect to the policy which has been adopted, and is fundamentally different (see paragraph 12 above) from its predecessor, Ordinance 25 of 1923, which was based upon a combination of the opposed principles of Direct and Indirect Rule. The previous Ordinance in form favoured a system following rather the first of these two principles than the second; a system, that is to say, under which orders issued for the guidance of natives reach those by whom they are to be obeyed as the orders of the Administrative Officer and not as those of the Native Authority, and only so much of the business of Government is left to the Native Authority as the Administrative Officer is himself unable to undertake.

Points of difference from the Ordinance of 1923.

26. The present Ordinance makes an important departure from its predecessor in section 11. By this section the power of the Administrative Officer to issue an order may (see paragraph 12 above) be exercised only if the Native Authority has neglected or refused to give such an order himself. Moreover, the previous Ordinance grouped all Native Authorities under the single title of "Headmen" and gave similar powers to all, without regard to their position in native law or to their relations of superiority or subordination, one to another. The present Ordinance, on the other hand, provides for the establishment and recognition of a hierarchy of Native Authorities, with varying powers, reflecting as nearly as may be the titles and relative positions and powers of such authorities in native law. These authorities (see paragraph 10 above) derive the right to exercise the traditional powers inherent in their office, and the additional powers conferred by the Ordinance, from the fact of their recognition by the Governor, under whom they are accordingly grouped, in their various relations, as under a single Chief of all the tribes in the Territory.

Native Authorities given powers of subsidiary legislation.

27. The third of the chief differences from the old Ordinance which is made by the new is contained in section 15. This section gives to Native Authorities, subject to the control of the Governor, a power of subsidiary legislation upon a very wide variety of subjects. It is a power entirely different from that given elsewhere in the Ordinance for the issue of particular orders for special objects. It is intended to enable native law and custom to be crystallised, when it seems desirable to do so, in the form of recorded rules, and to permit of the development and expansion of their own law by the Native Authorities to meet the changing needs and advancing civilisation of their own people. That power of legislation, and the concomitant power to impose fees for particular purposes, are not intended to open the way to the substitution for native law of something which the British officer thinks is better, for "it is idle to make an improvement in the laws precede the capacity of the people, for whom they are made, to appreciate them." The Government therefore only interferes to suppress that which is repugnant to European ideas of justice and morality—for example poison ordeals, the more objectionable forms of witchcraft, the killing of twins, or of dependents at the death of a Chief: for the rest, if the customs of native society weigh heavily on its members and they suffer by reason of their own institutions, they will be the more ready to effect real reform from within, and for that purpose this power of legislation is given; its exercise should be permitted only for political reasons in the interests of the people on the lines described above. It may also happen that in the details of administration it will be found desirable to impose fees for certain services, such as the registration of marriages and their dissolution, or the establishment and maintenance of markets; or to regularise by a general rule the performance of communal services such as the clearing of roads or of tsetse bush; and rules to this end may also be made. It is not intended to permit the addition to the existing taxation paid by natives of a multitude of irritating petty fees, for the broad principle, upon which a Hut or Poll Tax is justifiable and intelligible to natives, is that in one payment the subject renders all that is due from him to his Chief and the Government, a payment which represents at one time the bond of duty from him to the Governor and to his own Chief.

Making of rules and orders by Native Administration.

28. It is not always easy to define whether a Native Authority should act by order under section 8 or by rule under section 15, and the general notes on this subject written by Mr. E. St. J. Jackson, late Attorney General, which will be found in Appendix No. 4, are of interest. Where an Administrative Officer considers that a Native Authority should, for the benefit of the people concerned, make an order or frame a rule and advises the Authority to do so, it is preferable that section 8 rather than section 15 should be employed, as under

the latter the Chiefs have a tendency to "lean" too much on the Government and to regard the act as the act of the Government and not of themselves. Of course, if the Administrative Officer has doubts whether the order or rule will be acceptable to the Governor he should consult the Chief Secretary, through his Provincial Commissioner, before the Native Authority makes the order.

Dependence of Native Administrations on Administrative Officers in administrative and financial matters.

29. It is natural that in the early stages of indirect rule Native Authorities will naturally incline to lean on Administrative Officers whose orders they have so long been accustomed to await and to whom they have looked for guidance in all matters. While it is not desirable that they should be trained to act in complete independence of the Administration, the need for fostering the self-reliance of the Native Authorities and their gradual emancipation from direct control and dependence in small matters must constantly be kept in view. It is believed to be the habit of some Native Authorities to cloak all orders in the form of a Government instruction, partly the better to ensure observance and partly to evade the odium for an exacting order. It is apparent that this tendency will be accentuated if the Native Authorities are frequently induced to issue orders which they do not appreciate and to which they are possibly at heart opposed. Where it is unavoidable that the Administration should obtain the issue of particular orders District Officers should seek to instigate the Native Authorities to take the necessary steps, refraining as long as possible from giving them direct instructions.

Adoption of Laws of Territory for use in Native Courts.

30. In this connexion, it should be borne in mind, as explained in Native Administration Memorandum No. II (Second Edition), paragraph 12, that though Native Courts may be granted jurisdiction by the Governor to enforce any of the laws of the Territory, it is generally preferable for the Native Authorities to make simple rules under section 15 of the Native Authority Ordinance providing for the matters which require regulation. Such rules must be "subject to the provisions of any Ordinance or other law for the time being in force", that is to say, they must not conflict with the law of the Territory. Ordinances are cast in a particular legal form and are often either too complicated or too extensive to be used by Native Authorities, who can, as has been said, more appropriately take the powers they require by rules under section 15 of the Native Authority Ordinance. It should be noted that when a rule has been approved by the Governor and promulgated, a certificate to that effect should be sent, together with the English text, for record in the Secretariat; the form to be used for this purpose is reproduced in the Appendix. In drafting rules under section 15, or orders under section 8 when these are given in writing, attempts should *not*

Substituted vide Amendment Slip No. 4 of 30/1/36

NATIVE ADMINISTRATION MEMORANDUM No. 1.

Amendment Slip No. 4

30.1.36.

Delete paragraph 30 and substitute the following:—

"Adoption of Laws of Territory for use in Native Courts.

30. In this connection, it should be borne in mind, as explained in Native Administration Memorandum No. II (Second edition), paragraph 12, that though Native Courts may be granted jurisdiction by the Governor to enforce any of the laws of the Territory, it is generally preferable for the Native Authorities to make simple rules under section 15 of the Native Authority Ordinance providing for the matters which require regulation. Such rules must be 'subject to the provisions of any Ordinance or other law for the time being in force,' that is to say, they must not conflict with the law of the Territory. Ordinances are cast in a particular legal form and are often either too complicated or too extensive to be used by Native Authorities, who can, as has been said, more appropriately take the powers they require by rules under section 15 of the Native Authority Ordinance. It should be noted that when a rule has been made under this section, it should be signed by the Native Authority and sent to the Provincial Commissioner for submission to the Governor for approval. The Provincial Commissioner should forward the rule, together with the English text, to the Secretariat, both the vernacular text and the translation being duly certified; the forms to be used for this purpose are reproduced in the Appendix. In drafting rules under section 15, or orders under section 8 when these are given in writing, attempts should *not* be made to copy English legal forms; for example, it is quite unnecessary to recite (and almost impossible to render intelligibly in Kiswahili) 'By virtue of the powers conferred upon me by section 15 of the Native Authority Ordinance, I, *A.B.*,.....' and so on. It suffices to say simply 'It is forbidden (or obligatory, as the case may be) to do so and so'. It is for the District Officer and Provincial Commissioner to see that what is done is in fact done 'by virtue of' powers possessed by the Native Authority."

be made to copy English legal forms; for example, it is quite unnecessary to recite (and almost impossible to render intelligibly in Kiswahili) "By virtue of the powers conferred upon me by section 15 of the Native Authority Ordinance, I, A.B., ..." and so on. It suffices to say simply "It is forbidden (or obligatory, as the case may be) to do so and so." It is for the District Officer and Provincial Commissioner to see that what is done is in fact done "by virtue of" powers possessed by the Native Authority, and he will so certify on the copy transmitted to the Secretariat for record.

Substituted vide Amendment Slip No. 4 of 30/1/36

31. By the means which have been described the new Ordinance endeavours to embody the principles of Indirect Rule, to provide for the Government of natives indirectly through their own authorities and not directly through the Administrative Officers, to preserve and permit of the future development of the administrative machinery which has been created by the natives themselves, and the institutions which have grown out of their own traditions or may be evolved by them in the future; and so in effect to assist the native to develop that civilisation which he can develop. The Governor looks to all Administrative Officers loyally to make use of the Ordinance for these objects, and in particular to exercise their own powers under it with the utmost care, bearing in mind constantly that the conditions under which they may take action as laid down in section 12 are not a mere formality but are intended to restrict direct action by the British officer to cases of genuine necessity, for such action is in itself a violation of the principle of indirect rule. It is, of course, the duty of an Administrative Officer to advise a Native Authority to make any order which may be lawful under the Native Authority Ordinance, if he considers that it is in the interests of the people that the order should be made; and if his advice is neglected he may then, under the Ordinance, order the Native Authority to make the required order. He may convey his instructions to a Native Authority verbally or in writing; it is not necessary that they should be drawn up in formal manner in the same way as orders which he may have to make under the Native Authority Ordinance in case of default by a Native Authority (see section 14 (1) of the Ordinance).

The Ordinance to be used for the purpose for which it has been designed.

32. It follows from the nature of this Ordinance that where no Native Authorities are established no statutory powers are vested in Administrative Officers analogous to those they possessed under the previous Ordinance. In such areas therefore no orders *under the Native Authority Ordinance* may be issued, although the Administrative Officer may of course (and should) in his executive capacity give such orders to the Chiefs and Headmen of his District as may be necessary in the interests of the people themselves and for the order and good government of the area. If it is found in practice that those

Where no Native Authorities are established, Administrative Officers exercise no powers under the Ordinance.

orders are disobeyed; that the means at our disposal in such areas are not sufficient to enable us to enforce necessary orders in certain respects, the question will have to be considered whether specific powers should be taken for particular objects, but those powers would be taken by statute devised for that specific purpose and not by an order made by an Administrative Officer under powers vested in him by a measure erroneously described as a *Native Authority Ordinance.*

Native Authorities and their employees distinguished.

33. The Governor, or the Provincial Commissioner as his delegate, establishes, as has been explained, the office of Native Authority : that office normally consists of an hereditary tribal chief, invariably in association with certain Elders and other persons who occupy positions of dignity and responsibility (see paragraph 8 above). Subordinate to that office there may, it has been seen, be others of importance, whose offices may if necessary (see paragraph 13 above) similarly be established as (subordinate) Native Authorities, and in such cases the holders of those offices must be dealt with through their Head Chief, but subject to the same limitations as to recognition, dismissal, prosecution, etc., as in the case of the Head Chief, though the Governor may delegate his powers in this respect to the Provincial Commissioner. The holders of offices not so declared to be "Native Authorities" are merely employees of the Native Administration.

The Chiefs an integral part of the machinery of Government.

34. The prestige and influence of the Native Authorities can best be upheld by letting the peasantry see that *the Government itself* treats them "as an integral part of the machinery of the administration." That there are not two sets of rulers, British and Native, working either separately or in co-operation, but a single Government in which the Native Chiefs have well defined duties and an acknowledged status side by side with the British officials. Their duties should never conflict and should overlap as little as possible; they should be complementary to each other, and the Chief himself must understand that he has no right to his place and powers unless he renders his proper service to the State. It is obviously desirable that Government should be called upon as rarely as possible to intervene between the Chiefs and people, for if a Native Chief has lost prestige and influence to such a degree that he has to appeal to Government to enforce his orders he becomes not merely useless but a source of weakness to the Administration. This does not of course mean that any community may by appealing to Government throw off its allegiance to its Chief, or that mere unpopularity, which may be due to the exercise of very necessary discipline, forms any grounds for the deposition of a Chief.

35. The Native Authorities are most backward in their comprehension of the finances of their Native Treasuries and ability to handle these themselves is scarcely to be hoped for from all of the present generation. It will be so while the majority of the Chiefs and Headmen are illiterate, but every effort must be made to educate them to take an increasing measure of interest and responsibility in the financial side of the Native Administration. Illiterate Chiefs and Headmen.

36. In order that the Native Authorities may find adequate scope for their energies, take keen interest in their duties, and command the respect and obedience of their people, it is essential that they should in the exercise of their legitimate powers be given the greatest possible latitude and support compatible with their capacity and the position they occupy in relation to the Central Government. We should endeavour to give them an interest and an object beyond the routine performance of their duties, to interest them in the scheme of Government, to show them common interests, to engage their sympathies and active co-operation in our efforts to promote the welfare and progress of their people; for their primary duty is to their people and by the manner in which they fulfil it they will be judged. At the same time it will be the primary duty and object of the Administrative Officers to educate the Native Authorities in their duties as rulers according to a civilised standard; to convince them that oppression of the people is not sound policy or to the eventual benefit of the rulers; to bring home to their intelligence, as far as may be possible, the evils attendant on a system which holds the lower classes in suppression, so destroying individual responsibility, ambition and development amongst them; to impress upon them the advantage of delegating the control of districts to subordinate Chiefs and headmen and of trusting and encouraging those subordinates, while keeping a strict supervision over them; to see that there is no favouritism in such appointments; and to inculcate the unspeakable benefit of justice, free from bribery and open to all. So long as they prove themselves loyal and capable it is through them that the people will be governed, and as has been written above, it is the desire of the Government to uphold their authority and prestige in every legitimate way, and to encourage initiative and a sense of responsibility. Suggestions for reform or progress should always be encouraged and all orders to subordinates should be given by British officers through the responsible Chief. Chief to be given the greatest possible latitude and support.

37. I have written in the preceding paragraph that the Native Authorities should in the exercise of their legitimate powers be given the greatest possible latitude compatible with their capacity. The Closer Union Commission wrote (page 78 of their report) : "We do not advocate undue haste or any This view confirmed by Closer Union Commission.

attempt to give natives tasks far beyond their capacities, but responsibility itself is the most valuable educator, and if there is to be any advance at all the measure of responsibility which is allowed must always be somewhat in advance of the proved capacity of those to whom it is entrusted." This has been the policy of my Government. It has been alleged that the system of indirect rule has been applied too rapidly—although those who made this allegation were unable to agree amongst themselves when they met me at Government House in April, 1929, whether those words were meant to convey that the measure of the powers which had been extended to the Chiefs was too great, or on the other hand, that the application of the system had been too widespread in the first instance; whether, in brief, it was a question of quality or quantity. It is certain that the system could not exist at all as a real living force if less powers were vested in the Native Authorities. The powers of the Native Authorities allowed by the Government must not, of course, be confused with occasional abuses arising from the exercise by a Chief of powers which are not lawful or proper and are prohibited by the Government.

Subordinate Chiefs to be dealt with through the Head Chief.

38. When an Administrative Officer interviews a native subordinate his superior should if possible be present. An officer on tour should be accompanied by a representative of the Native Authority and make him the mouth-piece of any executive orders given to Headmen and other officers of a Native Administration. The chain of responsibility from the Village Headmen to the Native Authority will in this manner be maintained. Such executive order must of course be distinguished from orders which in case of default by the Native Authority may have to be given by the officer under the Native Authority Ordinance, a subject already fully dealt with above.

Application of term "Chief".

39. The term "Chief" is of very wide application and includes persons of greatly varying status. It has not been found necessary to classify Chiefs in grades, but a rough distinction may with advantage be drawn between important Chiefs and minor Chiefs and Headmen. For this purpose, the general rule may be taken to be that Chiefs with a population of over 20,000 should be regarded as important Chiefs, and those with under 20,000 people as minor Chiefs. Obviously, there will be border line cases, and a certain number of cases where Chiefs with small populations are for other reasons persons of importance. Moreover, there may be persons holding high rank in the Native Administration who should, for political reasons, be regarded as "important" Chiefs. In any case of doubt, Provincial Commissioners should seek instruction from the Secretariat, explaining in doing so the degree of importance

which they judge should be attached to the individual in question and their reasons for doing so. The instructions in paragraphs 44 to 51 with regard to the punishment of Chiefs should be interpreted in the light of the foregoing.

Attire of Chiefs.

40. Insignia and dress are to be distinguished. Provided Chiefs appear on official occasions in seemly and proper attire, they may wear any type of robe or clothing they please, each exercising his own taste in the matter of design, embroidery, colour, etc. European style of clothing should be discouraged by advice except in areas where it has come to be regarded by Chiefs and people as fitting and dignified. Robes, if worn, should be designed and made locally wherever this is possible.

Insignia.

41. As regards insignia of office for ceremonial occasions, it should be remembered that these exist in the majority of tribes, in some of which they are called "Vibangwa", and if they are suitable and seemly, their wearing should be encouraged in appropriate circumstances, but zeal for picturesque old customs should not be carried to the length of expecting Chiefs to appear in trappings which at the present day provoke mirth rather than respect. If Government decides to grant special insignia to important Chiefs, staffs of a uniform design will probably be used for the purpose and Government will bear the cost. Provision for chairs or stools of office for important Chiefs may be made from Native Treasury funds; the Royal Arms should not be used, and anything which is adopted should bear as close a resemblance as possible to the traditional form of Chief's seat, if any existed in the past history of the tribe. In addition to chairs of office of this nature, it is of course necessary to provide adequate and dignified seats for all members of Native Courts.

Attire and Badge of Office of Sub-Chiefs and Headmen.

42. Chiefs and Headmen who are not the Head of a Native Administration but subordinate to a superior authority may be permitted to wear such distinguishing dress or badge of office as the Native Authority concerned, with the concurrence of the Provincial Commissioner, may approve. Badges or other insignia in this sense should be bestowed by the superior authority, and not by the Government, and if occasion requires it is the superior authority which should withdraw any such privilege.

Chiefs are not the salaried servants of the Government.

43. It must be understood that chiefs are not salaried servants of the Government in the way that Liwalis are or Akidas were: provided, therefore, that their work is generally satisfactory, their minor delinquencies should be made the occasion for guarded rebuke rather than punishment. Officers will note the revision in this respect of the wording of the first edition of this memorandum, on the general ground that no opportunity for gentle instruction of the native should be lost whether he be chief or peasant. It must constantly be kept in mind in

this connexion, however, that there is sometimes a temptation to look for too high a standard in the native chief. The centuries which lie between ourselves and the native in point of development cannot be bridged in a generation or two. We are not entitled to put the whole tribal system on one side, to depose a chief, or to refuse to recognise the lawful successor to an office, merely because we do not find in the person concerned standards which might be expected in the best sections of English public life. From the point of view of capacity especially it should be remembered that it is not always possible to obtain a successor who is much better than the holder of the office (and at the same time as acceptable to the people), and that experience during the past five years has shown that a chief who has been condemned by one Administrative Officer as useless and incapable has been made an efficient chief through the patience of another Administrative Officer. As regards abuses, it must be remembered that abuses are inevitable, but the power of supervision exists and must be exercised, and we are using in this scheme of Native Administration an instrument which is being carefully and patiently fashioned for our purpose. Moreover, the native is as a rule quite capable of voicing his grievances and comes readily to lay his complaint to his Administrative Officer, provided he knows at what times and places he will have ready access to him. It is for this reason important that Administrative Officers on their stations should be easily accessible to natives, that District travelling should be systematically organised and that any tendency to inconsequent "gadding about" should be corrected: an officer who comes and goes hurriedly in a motor car will not hear much that he ought to hear and that he would hear were it known beforehand that on a certain date he would be at a certain place. Administrative Officers must, of course, at once step in to put a stop to abuses, and if no other course is possible the deposition of the delinquent chief may be necessary, but it should be regarded as an extreme step only to be recommended when all other means have failed.

Important Chiefs' neglect of duty, or commission of offences.

See Cir. 16/37

44. It will, however, happen on occasion that important chiefs may fail to comply with reasonable requests, or be unduly dilatory in fulfilling promises; such cases should first form the subject of protest and, if this is unheeded, of report to the Chief Secretary. More serious offences such as embezzlement of the funds of the Native Treasury, extortion or other criminal offence, refusal or neglect to carry out the awards of the Native Courts, or improper interference with them, should at once be reported for instructions as to the course to be taken. Important chiefs, and persons holding high rank in a Native Administration, should not prior to trial be kept under detention in the common prison or elsewhere unless such extreme measures are

necessitated by a very serious political crisis, in which case they should if possible, be sent immediately under strong guard to Provincial Headquarters.

45. The following paragraphs dealing with the punishment of Chiefs have reference, as regards the Courts, only to cases in which the Government is dissatisfied with the conduct of a Chief. The remedy of private persons against a chief in a court of law remains of course unaffected as does the traditional authority of a Head Chief over his subordinates.

The remedy of private persons against a Chief.

46. A chief in his capacity as a Native Authority within the meaning of the Native Authority Ordinance should if his actions are such as to make him liable to prosecution under that Ordinance be dealt with as prescribed therein, subject of course to the limitations imposed by the Governor's instructions for political reasons on the use of the punitive sections of the Ordinance against Chiefs.

Native Authorities to be dealt with as prescribed in the Ordinance.

see Cir. 16/37

47. If it becomes necessary to bring an important chief to trial the approval of the Governor for his suspension should first be obtained, as it is desirable that, if it is decided to prosecute, such chiefs should be suspended before being put up for trial. It must be realised that conviction in a criminal court of a serious offence will usually necessitate deposition and that the deposition of a chief with its break in the continuity of succession is a step which should only be resorted to when no other course is possible. It should be remembered that the successor of the deposed chief may be likely, given the same circumstances, to act in the same way, and that the deposed chief himself unless his punishment is such as to result in his removal from his area for a very long time, becomes an embarrassment to the Government and a rallying point for the malcontent and the agitator. Moreover, the deposition of an important chief is a very grave disturbance of the tribal organisation which can only be justified by absolute necessity. If however it is decided to proceed to trial the machinery of the High Court, which includes any subordinate court having jurisdiction in the matter, should be employed, and not that of the Native Courts; the principle being that in these extreme cases the Government makes clear to the people the power which it possesses to deal with the wrongdoer however highly placed. Where an important Chief has to be deposed as the only and proper course left to the Governor the latter should be prepared to vest the powers of the Chief in an Administrative Officer for the time being instead of putting in a weak or unacceptable native substitute. This course has been adopted twice with signal success in Tanganyika during the last five years (*cf.* paragraph 73).

Trial of important Chiefs.

See Cir. 16/37

Offences by Minor Chiefs.

48. In the case of minor Chiefs and Headmen the general principle to be followed is that the Head Chief, where there is one, should deal with all those under his authority, subject to the guidance and advice of the Provincial Commissioner where the person concerned is a sub-Chief or important Headman. Where there is no Head Chief, minor Chiefs and Headmen (and officials of the Native Administrations) who commit serious offences for which they are liable to arrest may be arrested if thought desirable by the Provincial Commissioner, who may, if the law admits in the particular case, exercise his discretion as to whether complaint should be made to a subordinate court or to a Superior Native Court; ~~or the case may be reported with a view to the removal of the chief (if he is one for whose removal authority is required) and his replacement by a better man~~ offender may removed from office and another person appointed in his place. This last provision refers of course only to hereditary chiefs or sub-chiefs of some standing and not to persons whose appointment and dismissal have always been in the hands of a Chief, whose authority in this respect remains unaltered, and who may be left to deal with his subordinates, either by executive action or through the Native Court, subject, of course, as in all cases, to any advice which the Provincial Commissioner may deem it necessary to give him.

See Amendment Slip No. 2 of 1934

Minor causes of complaint.

49. Minor causes of complaint such as negligence to carry out orders, etc., may in the case of these less important chiefs best be dealt with by the appropriate Court of the Native Administration (if there is one) and if repeated by reduction of salary, by fine, or by deprivation of office. Where there is a Head Chief action will normally be taken by him, whether of his own motion or at the request of the Provincial Commissioner or District Officer, but if there is no Head Chief through whom the minor chief can be dealt with, small fines in the form of deductions from salary may be imposed by the Provincial Commissioner on minor chiefs in receipt of a salary, where warnings have no effect: any part of a salary so withheld remains of course in the Native Treasury.

Minor Chiefs may elect to be tried.

50. The object of dealing with minor offences in this manner is to save the chiefs concerned from the humiliation, and consequent loss of influence, incurred by a public trial, but if the offence is one amenable to the law, and not mere obstructive negligence or incapacity, they should be offered the option of trial, before fine or removal from office. Offences arising out of old customs and habit, *e.g.*, the taking of tribute or service as a first offence, should at first be dealt with leniently.

Punitive authority to be sparingly exercised.

51. The foregoing provisions for the punishment of Chiefs and Headmen and important members of the Native Administrations are intended to govern such action when it becomes necessary, but it must not be forgotten that Chiefs and Headmen are not mere employees of the Government and that the

Amendment Slip No. 2. 16.7.34.

Paragraph 48, line 12:—

Delete the words "or the case may be reported . . . . . better man" and substitute "or the offender may be removed from office and another person appointed in his place".

constant exercise of punitive authority means the destruction of their influence; that advice and sympathetic guidance are far better tools in the hands of the Administrative Officer. Moreover, an officer who finds himself constantly at variance with his chiefs, and disposed to punish them, will do well to pause and reflect if the wrong is all one side, for it may be on occasion that in his own actions in dealing with his chiefs he will find the key to his difficulties. A small measure of willing service by a native even though his methods may not be perfect is worth far more than apparently more extensive results obtained under a policy which aims at a servile obedience to the orders of an Administrative Officer by a Chief or Headman who scarcely understands those orders.

Means to be employed when there is no paramount Chief.

52. Normally, as was said in paragraph 33, a Native Authority is a hereditary tribal chief, with his Elders. It is often, however, impossible to find a chief who is really recognised as their superior by his fellow chiefs, to place over a Native Administration, and in such cases, since it is impossible for every petty chief to form an Administration of his own, recourse has to be had to various expedients, or to co-operation with the people in the evolution of some new form of Native Authority as explained in paragraphs 14 to 18 above. Of the expedients which have been tried, the most promising is that of a council of chiefs from tribes of the same or kindred stock, even though each chief retains executive authority in his own area (see paragraph 14).

Councils of several kinds.

53. Such councils need careful handling, however, for they are of several kinds (see paragraphs 14 to 18) and care must be taken that they are not confused, for to do so may cause serious difficulties. The most elementary form is a council of Headmen which may be no more than a deliberative body; or the Headmen may pool their funds and co-operate only to the extent of occasional meetings, at which as a rule the District Officer should preside, for the administration of their common resources. The greatest practical difficulty in the case of these councils of Headmen arises from the absence of an appropriate central executive, especially when the council consists of a considerable number of Headmen, for though normally each member of the council retains his executive authority in his own area, it is unavoidable that certain executive functions must be discharged by the council as such, especially in connexion with the Native Treasury. In these circumstances, if a native with previous administrative experience is employed as Court and Treasury clerk at the Council Headquarters, he is naturally apt to concentrate all real power in his own hands, especially as the members of the council may all be illiterate. In some cases it has been found possible for the president of the council to act in this sense as its executive officer in between meetings, and this is perhaps the best expedient. Where it is

impossible, the next best arrangement is for these duties to be carried out in the District Office under the personal supervision of the District Officer, the council paying the necessary clerical staff. As the present Councillors come to be replaced by educated men and the council system becomes firmly established, this arrangement can be modified in whatever way circumstances may suggest.

Councils to choose their Presidents and to be Courts of Appeal.

54. Every council of whatever kind should be allowed to choose its own president, and should if the law and the circumstances of the case permit (see paragraph 18 above) be a court of appeal from all the Native Courts in the area over which it, or its members severally, have jurisdiction. If the council is a federation of chiefs each will administer his own area with the help of his tribal Elders; if the council is itself a Native Authority over the whole area (*cf.* paragraphs 14 and 18 above) it will appoint such subordinate officers as may be "central" officers of the administration (as opposed to officers of the Chiefs in their own respective areas).

Amalgamation of small units into neighbouring larger units.

55. At times it will happen that there is a powerful and vigorous chief in a District whose area is surrounded by smaller units, numerically and financially weak, and barely able to maintain themselves. Provided such units are of the same, or a kindred tribe, or at any rate show a disposition favourable to amalgamation, it is highly desirable that they should be induced gradually to group themselves under their more powerful neighbour, though in most cases this will amount merely to his recognition as their president during his lifetime, the status of the minor chiefs remaining in all essentials unaltered. But any change in the grouping of units must have the full concurrence of the people concerned and must not be forced upon them by the Administrative staff. If we force on them a system which is not in accord with their traditions and which they do not like we are creating an artificial administration which cannot endure and is for that reason highly dangerous. A Native Authority is not, however, artificial because progressive and not in accordance with conditions as we found them. Consolidation by petty chiefships of one tribe under a superior authority—whether chief or council—is not artificial if accepted and desired by the people.

Adjustment of boundaries to conform to tribal divisions.

56. It has been my policy to readjust administrative boundaries wherever possible so as to make them conform to tribal divisions, but the question requires very delicate handling in many cases, and we cannot transfer people from one administration to another unless that course is agreeable to them; in some cases they will not desire a change.

57. Cases occur, as stated in outline in paragraph 24, where, especially on the coast, the larger villages will be found to consist of descendants of Arab, Persian, and Baluchi settlers and their dependants, who form, with their surrounding lands, distinct units. It will generally be found that such villages have in existence a sort of informal Village Council, which manages their affairs and adjusts disputes, and it may be desirable to continue the system, constituting the village Headmen and Elders a Native Authority and Court for the village with their own little budget: it is usually useless to endeavour to make such communities subordinate to the Native Authority of contiguous local tribes. Village communities.

58. The foregoing paragraphs should be sufficient guidance for Administrative Officers in deciding upon the form of Native Administration which is best suited to the circumstances of their Districts: it is realised that they are somewhat general in form, but it is not possible to be more particular, for we have in the country an infinite variety of conditions, and tribes and communities of very different degrees of political organisation. The great principles to be followed throughout are those of building on the existing organisation and ideas of the people, of leaving it to the people themselves, assisted by sympathetic advice, to devise and develop their own institutions, and of resisting the temptation to play the part of "King-maker" or constitution maker: many ideal states have been devised by theorists for mankind, but the only true political development proceeds from within by evolution. Native institutions to be preserved and their evolution left to the people.

59. The form of Native Authority having been decided upon, the area of its jurisdiction must be settled. Normally this will be the area of the tribal lands of the people subordinate to each Native Authority and residence therein by natives must be taken as an admission of subordination to it. It will often happen that these boundaries will include estates owned by Europeans and Asiatics, but that fact does not affect the position of the "home" natives belonging to the tribal area even if they reside on those estates; they must accept subordination to, and be dealt with through, the Native Authority of the area. Area of jurisdiction of Native Authorities.

60. Cases arise, however, in a few areas where large blocks of European owned land are adjacent to areas under a Native Administration but are occupied, in addition to their European owners, by natives of numerous tribes employed by the owners of the land, who have no connection with the local tribe or its Chiefs. In these circumstances the local Native Authorities are generally unable to exercise their authority over the European farms, and indeed unwilling to try. Those foreign natives should be made subject to the Native Court in respect of Jurisdiction on non-native estates.

offences committed outside the area of the estates (with liberal right of transfer to the subordinate court if they so desire). Otherwise, so far as the foreign natives are concerned the area of the farms must be administered directly, as clear a boundary as possible being demarcated for the tribal area.

Townships excluded from the jurisdiction of Native Authorities.

61. Townships are excluded from the jurisdiction of Native Authorities, and for this reason it is undesirable to declare as townships any but the more important places : if, for example, all sorts of insignificant trading stations are declared townships, there is the probability that they will become the refuge of every wrongdoer and malcontent and the focus of opposition to the power of the Native Authority.

Movement and settlement of Natives.

62. It is not possible or desirable to restrict the liberty of the individual native to settle where he likes in the Territory provided that there is land available for his use, and that he is acceptable to the community among whom he proposes to settle : but in order to safeguard the interests of their own people Native Authorities may frame rules under section 15 of the Native Authority Ordinance, requiring any native desirous of settling in their area to make application for land for the support of himself and his family, and such applications may be refused if congestion already exists or grazing or water are scarce. Any native who in spite of such refusal continues to occupy and cultivate land may be dealt with by the appropriate Native Court. Permission to settle in any particular village may also be refused if the inhabitants thereof represent that for adequate reasons the intending settler is not acceptable to them. When a native leaves one Chief as provided for above and settles under another, he becomes *ipso facto* the subject of that other, but it should be clearly understood that a native has tribal right to a share in the land of his own tribe or community only (which includes any tribe or community into which he is absorbed by marriage or in any other manner customary among natives), and that he has not the right to occupy any land wherever situated in the Territory, but only the option of doing so if the Chief or community concerned are able and willing to absorb him, or if he obtains a right of occupancy from the Government (which would be freely given where land was available).

Free movement of natives.

63. It should clearly be understood that native custom may not be invoked to prohibit, restrict or regulate the movements of natives from one area to another. Specific statutory provision is made for these purposes in section 8 (j) of the Native Authority Ordinance, 1926, and if, for example, it is necessary to punish a native for leaving the area of one chief and going to that of another, he must be punished for a breach of a formal order under this section. No such order is to be made without the consent of the ~~Governor~~ Provincial Commissioner and this consent will be given in exceptional circumstances only (*e.g.*, sleeping sickness).

See A-S. No-3 of 1934

Amendment Slip No. 3. 16.7.34.

Paragraph 63:—

In the last sentence for "Governor" substitute "Provincial Commissioner".

64. The channel of communication between a Native Administration and the Government is the Provincial Commissioner and the District Officer and it is through this channel that Departments should as a rule communicate, but in purely technical matters the representatives of technical Departments may directly advise the Native Administrations, just as the Administrative Officer advises them on matters of administration. In its own area the Native Administration represents the executive Government so far as native affairs are concerned and all executive action which may be required will be carried out through it. If for the purpose of such executive action—*e.g.*, to enforce a quarantine on people or stock or to ensure that outbreaks of disease are reported or that cotton is uprooted at the proper time—it is necessary for native subordinates to be employed, they should, unless they are accompanying a European officer, be placed under the orders of the Native Authority, to whom the purpose of their employment should be made clear through the District Officer, and who should be held responsible by the District Officer for the proper carrying out of that purpose. In no circumstances may native subordinates charged with executive functions be despatched independently into the area of a Native Administration. If they are accompanied by a European officer he should work in collaboration with the Administrative Officer and not independently of him. Breaches of these instructions should be brought to the notice of the Governor.

Channel of communication between Government and Native Administration.

65. It has been ascertained in some areas that Native Authorities have been harassed by departmental subordinate native officials into issuing orders which they neither understand nor appreciate and which in some cases have been unreasonable. Care must be taken to make the Native Authorities understand that orders issued within their unit are issued by themselves and are to be considered as their own orders and not those of any other person who may instigate them to exercise their powers. It is for the Native Authorities to consider whether a particular order is called for and reasonable, and so long as they are not so satisfied they should refrain from issuing an order and seek the advice of the District Officer before so doing.

Departmental subordinate native officials.

66. It appears also that although orders issued at the instance of departmental officials may be reasonable in themselves they are apt to be enforced with undue rigour, largely because they emanate from some subordinate Government official and are taken to be direct Government orders for the enforcement of which the Native Authorities are responsible. Thus rules for cotton cultivation and sanitation have in certain cases operated harshly, penalties being imposed where advice and persuasion would have sufficed. It must be recognised that innovations

Innovations, the result of Departmental activity, to be cautiously introduced.

such as sanitation cannot be suddenly introduced by order but must become established in the minds of the people before they can be expected to appreciate and observe them. It should be impressed on Native Authorities that they are expected to exercise their influence in these matters rather than their powers of punishment and that the primary aim is to teach the people rather than to dragoon them into Western habits.

Responsibility of Native Authorities for maintenance of peace and order in their areas.

67. The maintenance of peace and good order among the natives, and the protection of property in rural areas, are the most important functions of the Native Administrations, and in so far as natives are concerned they should be required to discharge those functions without the assistance or intervention of the Police. Normally, native police constables should not be sent into the area of a Native Administration and police posts should not be established therein; but the first consideration is the safety of life and property and the apprehension of offenders, and Provincial Commissioners should see that such arrangements are made by District Officers in consultation with the police officers responsible for the detachments in their Districts as will most effectively achieve that object, while at the same time preserving the essential responsibility of the Native Authorities for the general maintenance of law and order in their areas. Subject to the consent of the Provincial Commissioner, a District Officer may give a general direction that without his prior consent Government native police may not enter the area of a Native Administration except in case of emergency or in actual pursuit of an offender, but if such a direction is given the circumstances of every case in which permission is refused must be reported for the information of the Governor. Measures which the Commissioner of Police and Prisons may consider necessary for the protection of non-natives in rural areas are a matter for arrangement between him and Provincial Commissioners, which need only be referred to the Secretariat in the event of disagreement. It should be scarcely necessary to add that European police officers are at liberty to travel freely wherever their duties may require them and that the Native Authorities must render them all assistance. Police officers should, of course, keep District Officers informed of any action they may find it necessary to take in a Native Administration area in discharge of their duties.

Employment of communal labour.

68. Where it is an established custom for services to the community such as the sanitary care of the villages and the annual cleaning and repair of tribal roads to be performed by communal unpaid labour Native Authorities may make rules of general application under section 15 or issue orders in particular cases under section 8 (q) of the Native Authority Ordinance

Duties and responsibilities of Administrative Officers, Police Officers and Native Authorities in the administration of the criminal law and the preservation of peace and good order.

With reference to Native Administration Memorandum No. 1, paragraph 67, I am directed by the Acting Governor to transmit the following additional instructions on the subject of the respective duties and responsibilities of Administrative Officers, Police Officers, and the Native Authorities in the maintenance of peace and good order. A copy of these instructions should be issued personally to every Administrative Officer and Police Officer and care should be taken to ensure that the Native Administrations are instructed in the matters which concern them.

2. It must be understood that the final responsibility for the maintenance of law and order rests on the District Officer of the District, and that in matters connected with the administration of the criminal law and the preservation of the peace the local Officer in charge of police must be guided by and generally give effect to the directions of the District Officer, who should satisfy himself that the police carry out their responsibilities for the safety of persons and property, and if he is not so satisfied, should report the circumstances to his Provincial Commissioner. It is not within his province to assume, or to endeavour to assume, executive command of the police unless there is no European Police Officer in charge of the Police in his District.

3. The Police and the Native Administrations are not independent and mutually exclusive authorities. They are complementary, the one to the other, as parts of the same machinery which is at the disposal of Government for the maintenance of law and order and to protect life and property. It is not His Excellency's intention to restrict in any way police activities in the detection of reported crimes against non-natives nor in the protection of their lives and property, but to forbid the general employment of unsupervised police constables in native areas and to make sure that misunderstandings do not arise owing to a division of responsibility. Upon the police rests the responsibility for the safety of persons and property, and police officers should be given every possible assistance in the discharge of that responsibility. For example, if the police receive a report that an offence has been committed on the estate of a non-native, they must obviously be empowered to proceed at once with the investigation, and should the suspected person have taken refuge in a native area, the police officer concerned, if he considers that delay would be prejudicial to the interests of justice, must follow up the trail, calling on the nearest Native Authority to assist.

4. I am to draw attention to Native Administration Memorandum No. II, 2nd edition, paragraph 23, in which Administrative Officers have been instructed that reports of serious crime or other offences which should not be dealt with in the Native Courts and must be investigated by the police, should at once be forwarded to the police for action and should not be held up pending the result of any inquiry by the Native Administrations. Certainly, the Native Authorities must discharge their responsibilities, and, when a serious crime is reported, must immediately take all possible steps to arrest the offender; but reports to the police should not be delayed for that reason, and if the crime is one which the officer in charge of the police considers that he should himself investigate, he and his men should take over the investigation, the Native Authorities rendering them every possible assistance The Native Administrations are new, and in some cases weak at present, and it would be neither of educative value, nor indeed just, to place upon them duties which they are unable to carry out, as for instance the investigations preparatory to trial which such offences as housebreaking require. The mere arrest of a known offender is another matter; this is more the duty of the Native Administration whether the knowledge comes to them as a result of their own action, or is communicated to them by the police or the District Officer.

5. It is laid down in Native Administration Memorandum No. I, paragraph 67, that European police officers are at liberty to travel freely wherever their duties may require them, and that native police constables may enter Native Administration areas in the case of emergency or in actual pursuit of an offender. Further, the Native Authorities must give active and willing assistance to the police in the investigation of crime and the police should consult the District Officer freely about any criminal matter regarding which the Native Authorities are ineffective.

6. The police should, in effect, seek to achieve the first considerations of the safety of life and property and the apprehension of offenders, whilst at the same time assisting to preserve, without in any way usurping, the authority of the Native Administrations for the general maintenance of law and order in their own areas. Police officers must invariably keep District Officers informed of any action they may find it necessary to take in a Native Administration area; and they should bring to the notice of the Commissioner of Police any circumstance that may hamper them in the efficient discharge of their legitimate duties in these areas.

7. Finally, Administrative Officers and police officers should remember that mutual confidence and co-operation are expected of them; that they are members of the same Service; and that the prestige of that Service suffers greatly in the eyes of the public if efficiency is allowed to suffer on account of differences between them.

for the purpose, but District Officers should be careful to see that the practice is not abused. This question is discussed in detail in the Labour Memorandum to which reference should be made in all cases of doubt.

Tsetse Reclamation and Sleeping Sickness measures.

69. Cases will arise where the health and well being, or even the continued existence, of a community are threatened by the spread of tsetse fly and human or animal trypanosomiasis. In such cases the Native Authority concerned should be requested to take whatever steps may be decided upon after obtaining the advice of such technical officers of the Government as may be able to assist. It is justifiable to exert pressure on an ignorant and apathetic community to protect itself in such circumstances, but it has been found in the past that the natives are only too willing to turn out and give their labour in order that the menace of the fly may be combated. It has been found necessary for reasons of health to remove communities wholesale into concentration areas and for this purpose compulsion will probably always be necessary. It must be understood, however, that Administrative Officers are not authorised to concentrate natives in this manner merely because administration will thereby be made more easy.

Administrative Officers to be careful not to exceed their authority.

70. In all their dealings with Native Authorities, Administrative Officers should be careful to bear in mind the distinction between those things which the former are empowered to do of their own authority, and those which require the sanction of the Governor. In the latter case it should always be explained that the Governor will be approached with a view to this or that step being taken if he so approves, and that his decision will be communicated in due course : if Administrative Officers take it upon themselves to permit things to be done which they have no power to permit they will have only themselves to blame if their decisions are not accepted by the Governor and have to be reversed.

Progress made since 1925.

71. Reviewing the last five years, I consider that the progress achieved in the task we have set ourselves, that is, the task of teaching the natives to administer their own affairs as far as possible, is most encouraging and reflects the greatest credit on the officers of the Administrative Service without whose support and sympathy no such progress could have been made. Personally, I am deeply grateful to them for the assistance they have extended to me in promoting the new policy in regard to Native Administration which I introduced into Tanganyika in 1925. It has been alleged by a certain section of the community that a number of Administrative Officers dislike the policy and the manner in which it has been applied and have so expressed themselves amongst the general public. I have always replied, as I reply again here now, that I do not believe those statements : no such hint has ever been conveyed

to me by an Administrative Officer although, I can claim with justice, I have given Administrative Officers the fullest opportunity to discuss public affairs with me, opportunity of which they have freely availed themselves. Owing to circumstances in Tanganyika I have probably had more intimate conversation with Administrative Officers than any Governor under whom I have served in tropical Africa.

Building on sound foundations.

72. I believe that our foundations are sound and this belief is shared by competent students of native administrative methods who have visited Tanganyika and had an opportunity of studying our system of Native Administration on the spot in its actual working. I should have no objection whatsoever to its being closely studied by a commission of expert persons sent specially to the Territory for the purpose. As I wrote early in 1929: "it is quite true that the system has not reached perfection, or anything like perfection—it would be absurd to have such aspirations." There are abuses no doubt but it is a mistake to think that all abuses that are exposed in connexion with native affairs in Tanganyika are due to the system of administration now in force: they did occur, and would occur again, in the system of administration if, indeed, it can be called a system, that previously existed. Unremitting supervision is necessary, as the Administrative staff recognise, and by that means such abuses as remain will gradually be eliminated.

Forecast of the future.

73. It is difficult, at this stage, to forecast what the future may be but, in my judgment, we shall be doing sufficient in this respect during the next few years, if we sit down firmly to the task of consolidating existing institutions on existing foundations, gradually purifying them and strengthening them; taking the greatest care always that the strongly established democratic character of existing native institutions is not in any way impaired. I do not think there is much more amalgamation of units to be done for the present* and any development in that direction should come from the people themselves. The idea that is still expressed in certain quarters that the Federations (like that of Sukuma) are held together merely by the personality of the permanent President and that we should therefore make every effort to encourage what has been termed a "paramount" Chief to emerge I now believe to be erroneous and, in some of its aspects, perhaps dangerous. My considered opinion is that having in view the impact of Western civilisation it will in the end be found that the Federation of Native Chiefs is a stronger instrument than the Administration of one Tribal Chief standing by himself. If a

*Written after I had heard of the proposed amalgamation in the Mwanza District.—D.C.

Federation showed any sign of breaking up on the death or other disappearance of the permanent President I should be prepared to put in the District Officer as President for the time being. The time will be ripe in a few years, I think, to form local Councils for the discussion of common subjects amongst the Chiefs and later a Central Native Council will emerge, I hope, for the discussion of all matters that affect the natives. This Council might, as I have written in my introductory notes to this Memorandum, become a general Native Council sending delegates to sit with delegates from a similar non-native Council for the transaction of the business which would ordinarily fall to a Legislative Council. I have already found amongst certain Chiefs a desire, expressed spontaneously by themselves, to meet other Chiefs for the discussion of common affairs. But these things will no doubt eventually be settled by the manner of the development of the people themselves, and in accordance with their own desires. I do not anticipate myself that the basis will always be tribal; but in any event the foundations of a system of local government in its ordinary sense will have been laid.*

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*In pondering on the political development of the native peoples in Tanganyika, especially in connexion with the conception in some minds that the best, if not the only, solution *must* be along the lines of British Constitutional development, it is interesting to consider the analogy afforded to us by India. Writing in *The Spectator* of the 2nd August 1930, Mr. Reginald Reynolds (who was the bearer of Mr. Gandhi's letter to the Viceroy in December 1929) remarks that the "truth is that we have to clear our minds of a confusion between democracy and the British Constitution. India wants the former and we offer a modified and diluted form of the latter." In regard to local government he is intensely interesting:—

"The point at issue is not really whether there should be democracy, but how democracy can be made effective, and this is where the traditional institutions of India come to our aid. For innumerable centuries before the English came to India the country was divided into small village republics, of which Sir Charles Metcalfe (a member of the Governor's Council) wrote in 1830: 'Dynasty after dynasty tumbles down; revolution succeeds to revolution . . . but the village communities remain the same. The union of the village communities, each one forming a separate little State in itself, has, I conceive, contributed more than any other cause to the preservation of the people of India . . . . and to the enjoyment of a great portion of freedom and independence.'

"Two of the finest administrators that Britain has ever sent to India have added their praises to the many commendations that have been made of these village republics. Sir Thomas Munro spoke of the 'strong attachment of the natives to trial by Panchayat' (village council), and described the British system which supplanted them as 'not only most expensive and vexatious, but totally inefficient' (East India Papers, London, 1820). Lord Elphinstone found

Taxation.

74. Little has been written in this Memorandum about the taxation of natives, and there is one maxim that seems to me to be sound and worthy of being placed on record in a document of this kind. Where the native is in fact a member of a unit of native society and is by native law and custom bound definitely to contribute in tribute or service to the welfare of the head of that community (who in turn has his obligations which he could not discharge without such tribute and service) it is definitely to the benefit of the individual tribesman that he should render that tribute and service in the form of a small tax instead of being exposed to constant, and sometimes capricious demands from his Chief: he should know what he has to render and should render it once for all for a definite period of time. Officers will, I believe, agree with me that the native prefers the small tax to the indefinite and varying demand. It is obvious that under such a system of taxation a share of the tax should go back to the Native Administration, and that as those Administrations increase in efficiency the share should be gradually increased. Where, however, after careful and patient investigation it is found that the native does not in fact belong to any unit of native society to which he has well defined obligations, where,

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the same facts to be true in an entirely different part of the country. He discovered that people in the Mahratta country were 'exempt from some of the evils which exist under our more perfect Government', and put it down to the fact that 'the (native) Government, although it did little to obtain justice for the people, left them the means of procuring it for themselves' (Report of October, 1819). Elphinstone spoke strongly for the Panchayats in the same report. Mr. Bernard Houghton, a former member of the Indian Civil Service, has stated that 'in some respects, particularly in its village organisations, its civilization (*i.e.*, India's) is more democratic and better than ours.'

"It was one of the feats of British efficiency that where previous conquerors had left untouched these centres of village liberty and self-government, our 'more perfect government' began their systematic destruction. The historian Dutt, in his Economic History of India, deplores 'the effacement of . . . . . village self-government,' as 'one of the saddest results of British rule in India' while Sir Henry Cotton, who is of the opinion that 'the people of India possess an instinctive capacity for local self-government' gives it as his opinion in New India that, 'a costly and mechanical centralization has taken the place of the former system of local self-government and local arbitration.'

"There still remain, however, that 'instinctive capacity for local self-government' and even skeleton organizations upon which to build. Nor is it improbable, if I understand the Congress leaders rightly, that the village republic will actually be the unit in the new state. The gravest essential for operative democracy is that representatives should be personally known to their electorates, and this is doubly important among ignorant or illiterate people."

in brief, there is no clear tribal foundation for the system of tax, it is, in my opinion, difficult to justify direct taxation of natives so situated who are still living their primitive life as agriculturists or pastoralists, especially if the non-native community pays no direct taxation. I do not include in these remarks detribalised natives living in a township or on a non-native estate; they are in a different category.

Fulfilling our obligations under the Mandate.

75. I have written in paragraph 72 above that I believe that our foundations are sound and that in the manner of our native administration in Tanganyika we are honestly seeking to fulfil our obligations under the Mandate. It is not too much to say, I believe, that the system of Native Administration introduced into Tanganyika Territory during the last few years is already exerting a powerful influence in shaping the political future of British East Africa, and that the Administrative Service of the Territory has gained and will increasingly receive the gratitude of those (for the present) inarticulate people for whom it has proved such a humane and efficient trustee.

Scope and intention of the memorandum.

76. This memorandum is intended as a general exposition of the principles upon which the policy which has been adopted in this Territory is based, and as a guide in a broad way to the application of those principles. It is fully realised that in matters of detail it may not always conform to local conditions and that it may not in every case be possible to follow what has been written in the letter; it must be interpreted therefore not in a narrow manner, but so that the essentials, which should be clear to all who study it carefully, may be retained with as little variety as possible in its application to the great diversity of conditions and people confronting Administrative Officers throughout the Territory. I desire it to be understood that so long as an officer is loyally and intelligently doing his best to interpret these instructions in the spirit in which they have been written he may count on support from Headquarters and every assistance which it is possible to give him; and that no officer should have any hesitation in asking for the further elucidation of any matters contained herein of which he is not satisfied that he has acquired a perfect comprehension.

DONALD CAMERON,
Governor.

MWANZA,
10th September, 1930.

APPENDIX I.

The Native Authority Ordinance (Cap. 47 of the Laws).

Short title.

1. This Ordinance may be cited as the Native Authority Ordinance.

Interpretation.

2. In this Ordinance unless the context otherwise requires—
"chief" means any native recognised as a chief by the Governor;
"native authority" means any chief or other native or any native council or group of natives declared to be or established as a native authority under this Ordinance for the area concerned;
"native" means any member of an African race and includes a Swahili and a Somali;
"Provincial Commissioner" means the officer appointed by the Governor to be in charge of the Province concerned;
"Administrative Officer" means the Administrative Officer in charge of the District concerned and includes any Administrative Officer acting under his directions.

Establishment of Native Authorities.

3.—(1) The Governor may, by notice published in the *Gazette*, declare that there shall be a native authority or native authorities for any specified area or areas and may prescribe the manner in which such authorities shall be constituted and may direct that any native authority shall be subordinate to any other native authority in such manner as he may think fit.

Appointment of persons to be Native Authorities or members thereof.

(2) When a native authority is or shall have been declared to consist of the person or persons for the time being discharging specified functions, or being members of a specified group, a person shall be deemed to be lawfully discharging such functions or to be lawfully a member of such group if and so long as he is so recognised by the Governor or by such person as the Governor may prescribe.

Limitation of powers of Native Authorities.

(3) When establishing a native authority, or at any time thereafter, the Governor may direct that such authority shall exercise only such of the powers conferred upon native authorities by this Ordinance as he may specify, and when any such direction shall have been given this Ordinance shall be deemed to confer upon such authority only such powers as the Governor shall have specified.

Revocation of orders and appointments.

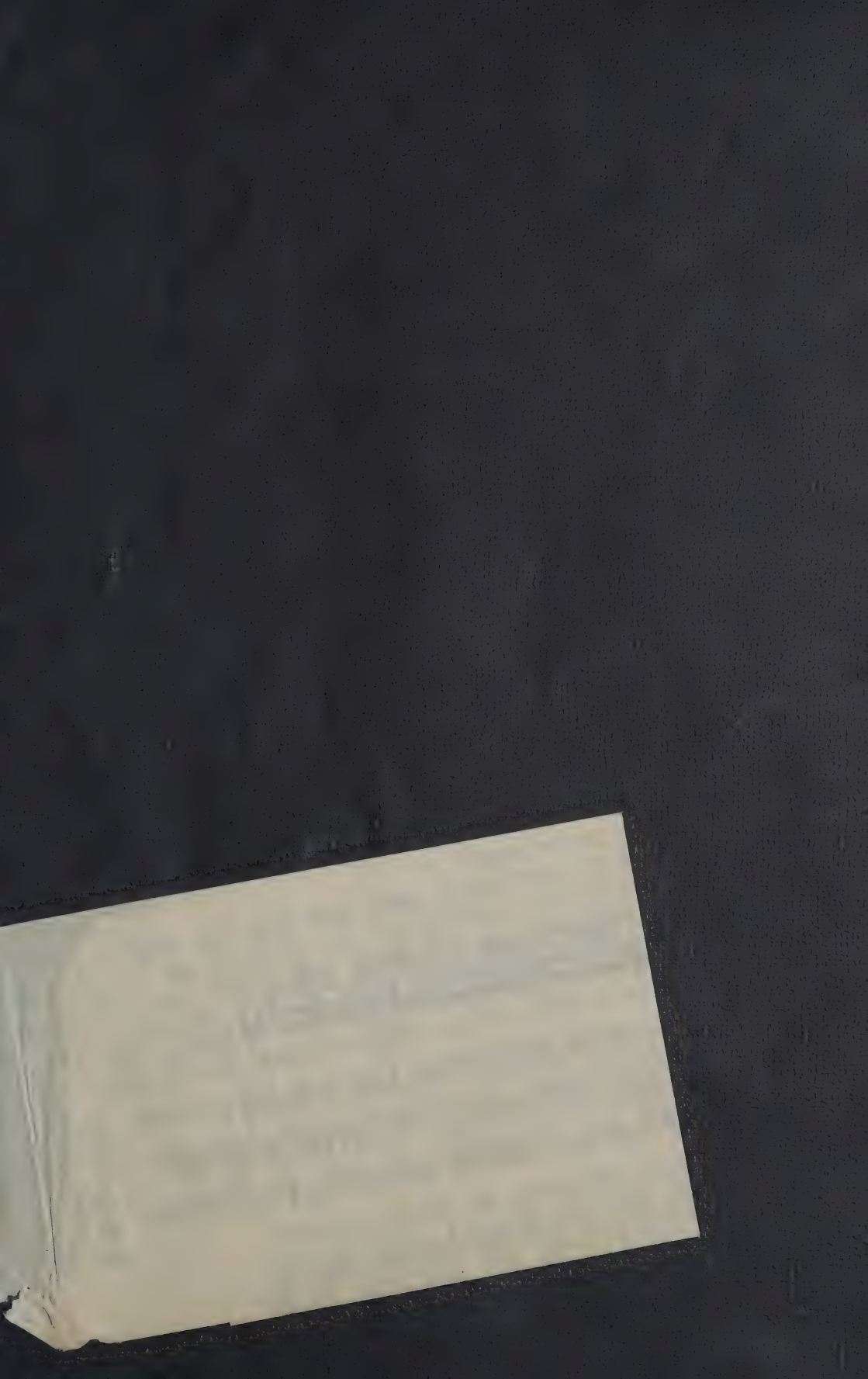
(4) The Governor may at any time revoke or vary any declaration, direction, or order made by him under this section, and may at any time order that any person recognised as a native authority or a member of a native authority shall cease to be so recognised and thereupon such person shall cease to be a native authority or a member of a native authority, as the case may be.

Delegation of powers.

(5) The Governor may delegate to a Provincial Commissioner such of the powers vested in him by this section as he may deem expedient, and subject to such conditions as he may impose, and may order that the exercise of any such delegated powers shall not require publication in the *Gazette* but shall be notified in such manner as is customary for the native community in the area concerned.

See General Notice No. 714 of 1934

3A · See Sec. 2 of ord. 15/35



Ordinance No.15 of 1946.

Native Authority (Amendment).

2. The Native Authority Ordinance (in this ordinance referred to as "the principal Ordinance") is hereby amended by the insertion of the following section after section 3 :-

Power to Governor to appoint administrative officer to office of native authority.

3A.-(1) Where the office of native authority established for any area under this Ordinance is for the time being vacant the Governor may, by order, appoint any administrative officer to such office.

(2) Where the Governor has made an appointment under this section the provisions of this Ordinance, with the exception of sections 3 and 14, shall, subject to subsection (3), apply.

(3) Anything to be done by an administrative officer appointed under this section in the exercise of any power conferred upon him by virtue thereof and with reference to the area for which he is appointed shall be deemed to be invalid by reason only of the fact that the act was not done within such area.".

4. It shall be the duty of every native authority to perform the obligations by this Ordinance imposed and generally to maintain order and good government among the natives residing or being in the area over which his authority extends, and for the fulfilment of this duty he shall have and exercise over such natives the powers by this Ordinance conferred in addition to such powers as may be vested in him by virtue of any law or native custom for the time being in force. Duties and powers of Native Authorities.

5. It shall be the duty of every native, when thereto required by a native authority, to assist in carrying out the duties imposed upon such authority by this Ordinance or by any other law or native custom for the time being in force; and every person so required by a native authority shall be deemed to be empowered to do all that may be reasonably necessary to give effect to any lawful order given by such authority. Duty of natives to assist Native Authorities.

6.—(1) It shall be the duty of a native authority to interpose for the purpose of preventing, and to the best of his ability to prevent, the commission of any offence by any native within the local limits of his authority. Prevention of crime.

(2) A native authority knowing of a design to commit an offence by a native within the local limits if his authority may arrest or direct the arrest of the native so designing, if it appears to such authority that the commission of the offence cannot be otherwise prevented. Any native so arrested shall, unless he be released within twenty-four hours of his arrest, be taken forthwith before an Administrative Officer or a native court having jurisdiction over him.

(3) Every native authority receiving information that any native who has committed an offence for which he may be arrested without a warrant or for whose arrest a warrant has been issued, is within the local limits of his authority, shall cause such native to be arrested and taken forthwith before an Administrative Officer or a native court having jurisdiction over him.

(4) Every native authority receiving information that property of any description which has been stolen, whether within or without the local limits of his authority, is within such limits, shall cause such property to be seized and detained pending the order of an Administrative Officer or a native court having jurisdiction in the matter and shall forthwith report such seizure and detention to such officer or court.

7.—(1) It shall be the duty of every native, when so directed by a native authority, to attend before such native authority or before a Provincial Commissioner, an Administrative Officer or any other Government officer, or a native court having jurisdiction over such native. Duty of natives to attend before Government Officers and others when so directed by Native Authority.

(2) Any native who when so directed to attend before any such person, authority or court, shall, without reasonable excuse, neglect or refuse to attend as and when directed, may be arrested by or under the order of the native authority and taken before such person, authority or court.

Power of Native Authorities to issue orders.

8. Subject to the provisions of any law for the time being in force, a native authority may, subject to the general or special directions of the native authority, if any, to whom he is subordinate, issue orders to be obeyed by natives within the area :

(a) prohibiting, restricting or regulating the manufacture, distillation, sale, transport, distribution, supply, possession, and consumption of intoxicating liquors;

(b) prohibiting, restricting or regulating gambling;

(c) prohibiting, restricting or regulating the carrying and possession of arms;

(d) prohibiting any act or conduct which in the opinion of the native authority might cause a riot or a disturbance or a breach of the peace;

(e) preventing the pollution of the water in any stream, water-course, or water-hole, and preventing the obstruction of any stream or water-course;

(f) prohibiting, restricting or regulating the cutting or destruction of trees;

(g) preventing the spread of infections or contagious disease, whether of human beings or animals, and for the care of the sick;

(h) requiring natives to report the presence within the local limits of his authority of any native who has committed an offence for which he may be arrested without a warrant or for whose arrest a warrant has been issued, or of any property stolen or believed to have been stolen whether within or without such local limits;

(i) the engagement of paid labour for essential public works and services: Provided always that no person shall be engaged for work under the provisions of this section—

(i) for a longer period than sixty days in any one year;

(ii) if he be fully employed in any other work or has been so employed during the year for a period of three months;

(iii) if he be otherwise exempted under directions issued by the Governor;

(j) prohibiting, restricting or regulating the migration of natives from or to the area under his authority;

(k) requiring the birth or death of any native within his jurisdiction to be reported to him or such other person as he may direct;

(l) prohibiting, restricting or regulating the movement in or through the area subject to his authority of livestock of any description belonging to any native;

(m) the provision of food for sale to travellers;

(n) prohibiting, restricting or regulating the burning of grass or bush, and the use of fire or lights in any manner likely to ignite any grass or bush in contravention of any law or regulations;

(o) for the purpose of exterminating or preventing the spread of tsetse fly;

(p) requiring any native to cultivate land to such extent and with such crops as will secure an adequate supply of food for the support of such native and of those dependent upon him;

x ordi no. 15/65

oral or written orders to be obeyed by
[illegible] ctives or all ctives.

THE NATIVE AUTHORITY ORDINANCE.

The Governor has sanctioned the issue of ordei
under Section 3(r) for the following purposes.

.I.

2/29. The destruction of locusts.

221/29. The hunting of game.

-do- The cultivation of poisonous roots.

-do- The burning of cotton plants.

38/30. The cultivation of coffee in the old Bukoba province.

33/31. Compulsory attendance at schools.

5/33. The extinguishing and prevention of forest

33/34. The tapping, collection and preparation fo of gum arabic.

13/35. Anti-erosion measures in the Mwanza, Kwimb Maswa and Shinyanga districts of the Lake Province.

40/35. Anti-erosion measures in the Rungwe distri of the Iringa Province.

50/35. The destruction of certain plants.

75/35. The cultivation of cotton.

(Regulation Part I only)

(q) prohibiting, restricting, regulating or requiring to be done any matter or thing which the native authority, by virtue of any native law or custom for the time being in force and not repugnant to morality or justice, has power to prohibit, restrict, regulate or require to be done; and

(r) for any other purpose, whether similar to those hereinbefore enumerated or not, which may, by notice published in the *Gazette*, be specially sanctioned by the Governor, either generally or for any particular area.*

Power of Native Authorities in event of famine.

9.—(1) Whenever in the area of the jurisdiction of any native authority there is or is likely to be such shortage of food that, in the opinion of the native authority, a famine exists or is likely to ensue, he may, subject to the general or special directions of the native authority, if any, to whom he is subordinate, issue orders within the local limits of his jurisdiction—

(a) requiring any able-bodied male native to work on any public works, irrigation works, relief works or in any other employment approved by the Provincial Commissioner or Administrative Officer for such period as the Provincial Commissioner or Administrative Officer may prescribe;

(b) requiring any native to move to such place as the native authority may direct in order that such native may be more conveniently fed;

(c) requiring any native to cultivate land within the local limits of his authority to such reasonable extent as the native authority may direct;

(d) prohibiting, restricting or regulating the removal of foodstuffs from the area of his authority and the movement of foodstuffs within such area.

(2) If a native authority shall accompany any natives required under this section to work or to move to a place where they can be more conveniently fed, such native authority shall continue to exercise his authority over such natives.

(3) There shall be given and paid to all natives working under the provisions of paragraph (a) of sub-section (1) such rations and wages as the native authority, with the approval of the Provincial Commissioner or Administrative Officer, may prescribe and, at the request of any native, such wages may be paid wholly or in part in food at rates fixed by the native authority with the approval of the Provincial Commissioner or Administrative Officer.

Promulgation of orders.

10. Every order given under section 8 or section 9 of this Ordinance shall be made known to the person or persons by whom it is to be obeyed in such manner as is customary in the area of

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* Under this section the Governor has sanctioned the issue of Orders for the following purposes:—

1. The destruction of locusts—G. N. No. 2 of 1929.
2. The hunting of game —G. N. No. 221 of 1929.
3. The cultivation of poisonous roots, etc. ,, ,,
4. The burning of cotton plants. ,, ,,
5. The cultivation of coffee in the Bukoba Province—G. N.No. 38 of 1930.

jurisdiction of the native authority by whom the order is given and thereupon shall be binding on the person or persons by whom it is to be obeyed.

Powers of Provincial Commissioners and Administrative Officers in relation to orders which may be issued by Native Authorities.

11.—(1) Whenever in the opinion of a Provincial Commissioner or an Administrative Officer it is expedient for the good order and government of the area of jurisdiction of a native authority, or for the prevention of famine in that area, that any order should be issued which such authority is empowered to issue by section 8 or section 9 of this Ordinance, the Provincial Commissioner or Administrative Officer may direct the native authority to issue and enforce any such order, and if the native authority shall neglect or refuse to issue the order which he is so directed to issue, the Provincial Commissioner or Administrative Officer may himself issue such order, and thereupon such order, when made known in the manner prescribed by section 10 of this Ordinance, shall have the same force and effect as if it had been issued by the native authority.

(2) Whenever a Provincial Commissioner or an Administrative Officer is of opinion that any order issued by a native authority should not have been issued or should not be enforced, he may direct the native authority to revoke such order or to refrain from enforcing, such order, or may himself revoke such order and may, with the consent of the Governor, require the repayment of any fine imposed by a subordinate court or a native court or the release from custody of any person sentenced to imprisonment by any such court for contravention of such order, whether before or after his direction to revoke or to refrain from enforcing such order, or his revocation of such order, was issued.

Penalties for offences by natives.

12.—(1) A native shall be liable to a fine not exceeding two hundred shillings or to imprisonment of either kind not exceeding two months or to both imprisonment and fine, if—

(a) he contravenes or fails to obey any order or direction which by this Ordinance he is bound to obey;

(b) he obstructs or interferes with the lawful exercise by a native authority of any powers conferred by this Ordinance.

(2) A native shall be liable to a fine not exceeding one thousand shillings or to imprisonment of either kind not exceeding one year or to both imprisonment and fine if, not being a person exercising administrative functions with the approval of the Governor, or a native authority, or a chief, he shall profess to exercise administrative functions, or hold himself out to be a chief or assume the powers of a native authority: Provided that no proceedings shall be taken for an offence against this subsection without the consent of the Governor.

See General Notice No. 714 of 1934

(3) A native accused of an offence against this section may be arrested without warrant by a native authority or by any person acting under the directions of such authority, and may be tried before the court of any magistrate or Administrative Officer or before any native court within the area of whose jurisdiction the offence was committed: Provided always that no court shall be deemed to be authorised by this section to impose heavier penalties than such court is authorised to impose in the exercise of its ordinary criminal jurisdiction.

Penalty for conspiring against Native Authority.

13.—(1) Any person shall be liable to a fine not exceeding two thousand shillings, or to imprisonment of either kind not exceeding one year, or to both imprisonment and fine, if he shall conspire against or in any manner attempt to undermine the lawful power and authority of any chief or native authority.

(2) A native court shall not have jurisdiction to try an offence against this section.

(3) No proceedings shall be taken for an offence against this section without the consent of the Governor.

Penalty to which Native Authorities are liable.

14.—(1) A native authority shall be liable to a fine not exceeding one thousand shillings upon conviction before a subordinate court of the first class of any of the following acts or neglects—

(a) if he shall wilfully neglect to exercise the powers by this Ordinance conferred upon him for or in respect of the prevention of offences or the bringing of offenders to justice, or the seizure of property stolen or believed to have been stolen;

(b) if he shall wilfully, and without reasonable excuse, refuse or neglect to exercise the powers given to him by section 7 of this Ordinance;

(c) if when directed by a Provincial Commissioner or an Administrative Officer to issue orders for any of the purposes specified in sections 8 and 9 of this Ordinance he shall wilfully neglect to issue the orders directed;

(d) if he shall wilfully neglect to enforce any orders issued by him under the directions of a Provincial Commissioner or an Administrative Officer or issued by a Provincial Commissioner or an Administrative Officer under the powers conferred by sub-section (1) of section 11 of this Ordinance;

(e) if he shall wilfully neglect to revoke an order when directed by a Provincial Commissioner or an Administrative Officer under the powers conferred by sub-section (2) of section 11 of this Ordinance, or if he shall enforce or attempt to enforce any order after he has been directed as aforesaid to refrain from so doing;

(f) if he shall wilfully neglect to enforce any lawful order issued by a native authority to whom he is subordinate; or

(g) if he shall be guilty of any abuse of authority conferred on him by this Ordinance or by any other law or by native custom.

(2) When a group of natives is collectively appointed to be a native authority proceedings may be taken against all or any members of such authority, either together or separately, in respect of any act or default punishable under this section, and upon proof of the commission of an offence by such authority every member thereof shall individually be liable to the penalties prescribed unless he shall satisfy the court that he was in no way responsible for or a party to the commission of the offence.

(3) No proceedings shall be taken for an offence against this section without the consent of the Governor.

See General Notice No. 714 of 1934 Cir. 16/37

Powers of Native Authorities to make rules.

Repealed by Sec. 4 of Ord. 1 of 1937

15.—(1) Subject to the provisions of any Ordinance or other law for the time being in force a native authority, with the concurrence of the native authority, if any, to whom he is subordinate, and subject to the approval of the Governor, may make

rules, to be obeyed by natives within the local limits of his jurisdiction, providing for the peace, good order and welfare of such native. Such rules may prescribe the fees to be paid in respect of any matter or act for which provision is made thereby and may impose penalties for the breach thereof not exceeding a fine of one thousand shillings or imprisonment of either kind for two years or both imprisonment and fine.

(2) The Governor may at any time revoke any rule made by a native authority under this section and such revocation shall be made known in the manner herein prescribed for the promulgation of such rule and shall thereupon have effect.

Need not be published in Gazette. Ord 26 of 1924.

(3) Every rule made under sub-section (1) shall be made known in such manner as is customary for the native community concerned and thereupon shall be binding on all natives residing or being within the jurisdiction of the native authority making the rule; and, without prejudice to any other mode of proof, a certificate purporting to be signed by a Provincial Commissioner or an Administrative Officer shall be sufficient evidence of the terms of any such rule, that the concurrence of a superior native authority, if necessary, has been obtained, that the approval of the Governor has been given and that the rule has been made known as required by this sub-section.

(4) A native accused of an offence against rules made under this section may, unless the rules otherwise prescribe, be arrested without warrant by a native authority or by any person acting under the directions of a native authority and may be tried before the court of any magistrate or Administrative Officer or before any native court within the area of whose jurisdiction the offence was committed: Provided always that no court shall be deemed to be authorised by this section to impose heavier penalties than such court is authorised to impose in the exercise of its ordinary criminal jurisdiction.

Preservation of jurisdiction of courts concerned in the issue of orders and rules.

16. No court shall be precluded from trying an offence under this Ordinance by reason of the fact that such offence, if committed, was a breach of an order, direction or rule, issued by the court as a native authority, or under the powers given by section 11 of this Ordinance, or by any member of the court as a native authority or member of a native authority.

Power of Governor to make rules.

17. The Governor may make rules for the better carrying into effect of the objects and purposes of this Ordinance.

For schedule - See Sec. 5 of Ord. 15/25

arrested without warrant by a native authority or by any person acting under the directions of a native authority and may be tried before the court of any magistrate or Administrative Officer or before any native court within the area of whose jurisdiction the offence was committed:

Provided always that no court shall be deemed to be authorised by this section to impose heavier penalties than such court is authorised to impose in the exercise of its ordinary criminal jurisdiction.

(5) The Governor may at any time revoke any rule made by a native authority under this section and such revocation shall be made known in the manner herein prescribed for the promulgation of such rule and shall thereupon have effect.".

Ordinance No. 18 of 1935.
Native Authority (Amendment).

5. The principal Ordinance is hereby further amended by the addition of the following Schedule thereto:- Addition of Schedule to Cap.

Section 18. "SCHEDULE.

CERTIFICATE TO BE ENDORSED UPON THE ENGLISH TEXT.

I certify to be a correct translation of the vernacular text of the rules made by the native authority of.....
..... attached hereto.

Dated..... .....
Translator.

CERTIFICATE TO BE ENDORSED UPON THE VERNACULAR TEXT.

These are the rules of the native authority of.....
..... referred to in my certificate.

Dated.....

.....Translator."

Passed in the Legislative Council on the twenty-seventh day of June, 1935.

Archibald Jervoy
Clerk of the Legislative Council.

4. Section 15 of the principal Ordinance is hereby revoked and the following section substituted therefor:

"Power of native authorities to make rules.

15.-(1) Subject to the provisions of any Ordinance or other law for the time being in force a native authority, with the concurrence of the native authority, if any, to whom he is subordinate, and subject to the approval of the Governor, may make rules, to be obeyed by natives within the local limits of his jurisdiction providing for the peace, good order and welfare of such natives (including rules with regard to public services provided by the native authority in any capacity), notwithstanding that the matter to which any such rules relate is a matter in respect of which an order under section [illegible] could have been issued. Such rules may prescribe the fees to be paid in respect of any matter or matters for which provision is made thereby and may impose penalties for the breach thereof not exceeding a fine of one thousand shillings or imprisonment of either kind for two years or both imprisonment and fine.

(2) All rules made under this section shall be in writing and shall be made in the English or such other language or dialect as is commonly spoken by, or understood among, the majority of the native population in whose such rules are intended to apply, and shall be issued by the native authority and sent to the Provincial Commissioner for submission to the Governor. The Provincial Commissioner shall cause a translation thereof to be made into English language and shall cause both the translation and the vernacular text to be certified in the manner set forth in the Schedule hereto and shall attach the two certified texts together when submitting the rule to the Governor for approval. The Governor when approving such rules shall give his approval to the English text which shall be the authoritative text of all such rules and shall, in the event of any conflict between the two texts, prevail.

(3) Every rule made under sub-section (2) shall be made known in such manner as is customary for the native community concerned and thereupon shall be binding on all natives residing or being within the jurisdiction of the native authority making the rule; and, without prejudice to any other mode of proof, a copy of the English and vernacular texts, certified under the hand of a Provincial Commissioner or an administrative officer to be true, shall be sufficient evidence of the terms of any such rule, that the concurrence of a superior native authority, if necessary, has been obtained, that the approval of the Governor has been given and that the rule has been made known as required by this sub-section.

(4) A person acquitted of an offence against rules made under this section may, unless the rules otherwise prescribe, be arrested

APPENDIX II.

The Native Authority Ordinance (Cap. 47 of the Laws).

ESTABLISHMENT OF NATIVE AUTHORITIES.

DELEGATION OF POWERS.

In exercise of the powers conferred upon him by sub-section (5) of section 3 of the Native Authority Ordinance the Governor has been pleased to delegate the powers conferred upon him by sub-sections (1), (2), (3) and (4) of the said section to all Provincial Commissioners throughout the Territory.

Provided that the powers so delegated shall be exercisable in respect only of those Native Authorities directed to be subordinate to the Native Authorities declared by the Governor.

Further, the Governor has been pleased to order that the exercise of the powers so delegated shall not require publication in the *Gazette*, but shall be notified in such manner as is customary for the native community in the area concerned.

Government Notice No. 9 of 1927 is hereby revoked.

By His Excellency's Command.

Dar es Salaam,
12th March, 1930.

D. J. Jardine,
Chief Secretary to the Government.

APPENDIX III.

TANGANYIKA TERRITORY. N.A. Form 11.

The Native Authority Ordinance (Cap. 47 of the Laws).

RULES ENACTED BY NATIVE AUTHORITY UNDER SECTION 15 OF THE NATIVE AUTHORITY ORDINANCE.

I, ..., Provincial Commissior of the.....Province hereby certify that the ru set out in the Schedule hereto over my signature have been enacted the Native Authority of.....with the approva of the Governor to take effect from.....an have been made known in the manner customary for the native community by whom they are to be obeyed.

Given under my hand this.....day of.....19.....

.....
Provincial Commissioner.

Substituted vide Amendment Slip No 5 of 30/1/36

*SCHEDULE.

*To be continued on reverse or on separate sheets if necessary and signed by the Provincial Commissioner after the last Rule recorded.

NOTE.—If the Native Authority making the rule is subordinate to another Native Authority, the concurrence of the Superior Native Authority must also be recited.

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Amendment Slip No. 5

30.1.36.

Delete Appendix III and substitute the following:—

"APPENDIX III.

N.A. Form 11.

TANGANYIKA TERRITORY.

The Native Authority Ordinance (Cap. 47 of the Laws, as amended by Ordinance No. 15 of 1935).

RULES ENACTED BY NATIVE AUTHORITY UNDER SECTION 15 OF THE NATIVE AUTHORITY ORDINANCE.

Certificate to be Endorsed upon the English Text.

Certified to be a correct translation of the vernacular text of the rules made by the native authority of.....attached hereto.

Date..... .....

Translator

Certificate to be Endorsed upon the Vernacular Text.

These are the rules of the native authority of..... referred to in my certificate.

Date..... .....

Translator"

APPENDIX IV.

The Native Authority Ordinance (Cap. 47 of the Laws).

NOTES ON SECTIONS 8 AND 15 OF THE NATIVE AUTHORITY ORDINANCE.

The difference between orders given under section 8 of the Native Authority Ordinance, and rules made under section 15 is not one between orders addressed to particular persons and rules of general application, for orders under section 8 may well be of general application in a given area. The distinction is rather one relating to the subject of the rules or orders and to their nature and it may be easier to appreciate this distinction if it is remembered that section 8 of the present Ordinance replaces section 6 of the former Ordinance and that section 15 of the present Ordinance is entirely new.

2. Section 8 has two aims. It recognises the power inherent in Native Authorities by native law to give orders, whether to particular individuals or of general application, to give effect to native law (section 8 (q)). In addition, the section confers powers to give orders of either kind upon a variety of specified matters as to which the Government has imposed on Native Authorities the duty of special control. Many, if not all, of the subjects expressly mentioned in the section are subjects upon which a Native Authority would have the inherent power to give orders by native law, but they are nevertheless expressly mentioned, not only in order to confer those powers where they may not be given by native law, but also in order to draw attention to particular matters upon which the Government expects Native Authorities to exercise the duty of control.

3. It will thus be seen that the powers recognised or conferred by the section, coupled with the special powers given by sections 5, 6, 7 and 9, are sufficient, in the ordinary circumstances of the present time, to enable Native Authorities to carry out the whole of their functions of Government. Section 15 is new to our law and has special purposes. Native society will not remain stationary. Contact with other civilisations, and the changing needs and advancing development of its own, will produce conditions, for which no provision is made by existing native law, or in the list of special subjects mentioned in section 8 and which cannot properly be met by a mere addition to that list. To meet such conditions and at the same time to allow the organisation of native society to develop along its own lines, native law itself must be capable of expansion. And it is through section 15 that it can expand by a series of legislative acts in the same manner as the legislation of any other society.

4. So too, it may at any time become desirable that some existing native law or custom of general application, dealing with some important subject, should be recorded in the form of written rules before it becomes obscured or whittled away by changing conditions. For this purpose, also, use may be made of the powers given by section 15.

5. But there is also a third purpose for which use may be made of section 15 and it is in this relation only that it would seem possible to confuse the purpose of this section with that of section 8. Reference is made in paragraphs 40 and 44 of Native Administration Memorandum No. I to the making of rules under section 15 upon subjects upon which orders

could also be given under section 8. In such cases the factors which would suggest that a rule should be made under section 15 rather than an order given under section 8, are the following:—

(1) The rule is to be of general application over a considerable area.

(2) The rule deals with an important subject and is intended to be a part of the permanent law of the area to which it relates.

6. There is, in addition, one particular matter for which, if provision is required, recourse must be had to section 15—namely the imposition of fees. Such fees may be required, for example, as a payment for services rendered or a privilege conferred or as a means by which particular activity, such as the consumption of native liquors, can be more effectively controlled. They are a form of taxation and for this reason require formal authority of the nature of a legislative act.

7. In general, it may be said that rules made under section 15 are really of the nature of native Ordinances springing from the will of the Native Authority. Orders given under section 8 more closely resemble executive orders or orders or regulations given or made under an Ordinance. It is for this reason that the former can be made only by a Native Authority and cannot be made against the Authority's will, that they require the approval of the Governor, and that they provide for the imposition of fees and of much larger penalties than are allowed by the earlier section.

E. St. J. Jackson,
Attorney General.

17th November, 1927.

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